Flexibility in Dutch local Planning

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SUMMARY

This paper suggests that the formal rigidity of the Dutch local planning system reflects the principles of Dutch law upon which it is based. It also describes the methods which are used in practice to circumvent this rigidity and to provide the Dutch planner with the flexibility which he needs in the face of uncertainty on one hand and strong pressures for commitment on the other. The paper begins with a theoretical discussion of flexibility and introduces the concept of strategic and tactical levels of decision. Thereafter, the main legal instruments of Dutch local planning are considered and the paper ends with some comparative comments on local planning in the United Kingdom.

SAMENVATTING

Dit werk suggereert dat de formele starheid van het Nederlandse lokale planningstelsel de beginselen van het Nederlandse rechtssysteem, waarop het gebaseerd is, weerspiegelt. Het beschrijft tevens de methoden die in de praktijk gebruikt worden teneinde deze starheid te omzeilen en Nederlandse planners te voorzien van de flexibiliteit, die zij, gezien de heersende onzekerheid aan de ene kant en de noodzaak zich te binden aan de andere kant, nodig hebben. De verkennning begint met een theoretische discussie over flexibiliteit en introduceert het concept van een strategisch en een tactisch besluitvormingsniveau. Daarna worden de belangrijkste wettelijke instrumenten van de Nederlandse lokale planning behandeld. Het werk eindigt men enkele vergelijkende opmerkingen t.a.v. de lokale planning in Groot-Brittannië.

ZUSAMMENFASSUNG

1. INTRODUCTION.

This paper is a result of a certain amount of exploratory research into the Dutch local planning system, as part of a comparative study of local planning in the Netherlands and the United Kingdom. It is concerned with flexibility in Dutch planning law and organisation as it pertains to the "bestemmingsplan" and its realisation. It has been written because of an impression which has formed in the minds of the research team that flexibility constitutes a special problem for Dutch planning, more so than for its British counterpart. Any perusal of the recent Dutch planning literature will indeed confirm an intense interest in this subject, with lawyers taking a lead in the theoretical argument. The reasons for this should become evident later on in this note. Briefly, they have to do with Dutch legal philosophy.

The current obsession with flexibility is even such as to have led Buit to devote his recent inaugural lecture to it. He warns, quite rightly, that flexibility must not be seen as an end in itself, but that we must rather assess its differential effects on various interests (Buit, 1975). Use will be made of this lecture, as well as of two works, one by Kocken (1966) on the Dutch system of building permits, and the other the legal commentary by Crinelle Roy. There will be further references to the literature to illustrate particular points.

A work which has proved particularly useful in illuminating the background of Dutch legal and administrative thinking is Van Gunsteren’s thesis on "The Quest for Control" (1972). It gives an understanding of the model of a "Rechtsstaat" (a state devoted to the rule of law) and its shortcomings under the conditions prevailing in the twentieth century with its active governments *).

This paper has two parts. For reasons outlined in the introduction to section 2, the first of these explores theoretical issues. The second part (sections 3-5) which we expect to be of more immediate use, gives a description of legal instruments and their use. Finally in the conclusions we make some highly speculative remarks about possible outcomes of our present project.

One further remark seems in order. Conceptually it might be possible to handle problems of flexibility. But in practice the dividing line between flexibility and outright opportunism is difficult to draw. Instruments created to cope with exceptional cases (such as the notorious article 19 of the 1965 Physical Planning Act; see section 5.4.) may be used on a regular basis thus avoiding commitments which the law clearly expects public authorities to enter into. But this is only possible with the connivance of higher authorities. In this way, the general desire in Dutch planning circles to be flexible in the promotion and control of development creates a climate, in which opportunistic decision-making tends to be accepted with relative ease. Clearly, this promises to become an interesting issue in our further comparative and theoretical work.

*) Van Gunsteren’s work is in English. The translations of other Dutch works are by the Delft research team.
2. A FRAMEWORK FOR DISCUSSING FLEXIBILITY.

As indicated in the introduction, this section introduces a framework for discussing flexibility. The need for such a framework arose out of our confrontation with Dutch planning practice. A multitude of arrangements seemed to exist in Dutch planning which all apparently had something to do with flexibility. Clearly, some theoretical argument was required so as to be able to give a coherent description of what we found.

We see this as an example of theory-building and as a necessary concomitant of any confrontation with practice. At the same time we, of course, expect that this framework will have to be substantially modified as our experience of the reality of Dutch and British planning grows.

This section begins by making a (relative) distinction between tactical and strategic decisions. The quest for flexibility reflects the necessary uncertainty surrounding the latter. The section concludes by discussing two factors relating to the flexibility of planning systems.

2.1. TACTICAL AND STRATEGIC DECISIONS

The object of this research project is to study the promotion and control of development. Development can be seen as a continuous story of decisions, some of them involving public, and in particular, local authorities in the issue or refusal of permits or the granting of subsidies. Decisions which are relatively closest to action in the development process may be described as tactical. Ideally, decisions should be made as and when the need for them arises. But it is difficult to make decisions which reflect even present circumstances and time-lag in decision-making, with the accompanying change in circumstances which is likely, leads to even greater uncertainty. Decisions ought not to be taken too far in advance therefore, while delays in making them may also have adverse effects on the continuous stream of activities involved in development. In short, the ability to make speedy decisions close to action is an important requisite for good decision-making.

However, there are obstacles in the way of speedy decision-making. Making reasonable decisions is a time-consuming affair. To cut the amount of time needed, decision-makers reduce the cognitive effort involved by invoking, as far as is possible, pre-conceived rules, or by following a plan drawn up in advance. Decisions as to these rules will be termed strategic.

The distinction between strategy and tactical decisions is, of course, of military origin. It has also been extensively applied in management theory and public administration, where it implies a hierarchy of plans and decisions in terms of scale, time and normative content — that is, scale, time-span and the scope for making value-judgements decrease as one moves from the strategic to the tactical level.

In public planning, John Friend (1974) pointed to a similar distinction between “policy” and “decision”. Policy, he states, “demands an act of recording some form of words which then forms part of the context of operations of all people whose role involves them in taking specific decisions within the class of situations concerned ...”. Friend goes further to suggest that this is adding to the stock of recorded knowledge which is “objective” in Popper’s terms, in the sense that “the act of recording it gives it an existence which is independent of the consciousness of any particular individual”, although this does not, of course, mean that it is objective in the sense of being somehow proven or irrefutable. Policy then is “essentially a stance which, once articulated, contributes to the context within which a succession of future decisions will be made”, whereas a decision itself is “an act which passes into history once carried out”.

The terms used by Friend are different from those used in this paper but the similarity between his distinction between policies or policy decisions and action decisions and our
distinction between strategic and tactical decisions is obvious. Further examples of attempts
to devise more sophisticated schemes of levels of control and action could be quoted *), but
for our purposes the simple distinction between strategic and tactical decisions will suffice,
provided that it is borne in mind that this distinction is relative. For instance, the issue
or refusal of building permits is a strategic decision with respect to the decisions of develope­
ers and builders. Also, strategic decisions of a local authority issuing permits are governed
by other strategic decisions in turn, e.g. the shape of a development plan by the availab­
ility of subsidies from higher authorities. The complexity of the problems it faces might
even induce one and the same authority to develop a whole battery of decision-making
instruments of various degrees of abstraction, from the most general expressions of policy
to the level of immediate action. The unfolding of such a set, often leading to the form­
atation of multi-planning agencies (Faludi, 1973), will indeed be found amongst the responses
to the quest for flexibility identified in section 2.3.

Because of the difficulties of making speedy decisions which adequately reflect all necessary
considerations, there is, therefore, a need for pre-conceived guidelines, rules or plans. These
help to facilitate decision-making and, indeed, without them the task of decision-making
would really become impossible. How else should a decision-maker relate his particular
decision to those made by himself and/or others before him, those in the process of being
made by others next to him, and those going to be made by himself and/or others in the
future? To give him guidance and the (possibly false) feeling of knowing what he is doing,
a decision-maker will therefore always cry out for rules and plans drawn up in advance.
That very same decision-maker might of course complain about the rigidity of the pre­
conceived strategies when faced with the problem of implementing them **).

The advantages of strategic decision-making in particular instances therefore need to be
weighed against its disadvantages. But such disadvantages stemming from uncertainty can
never provide an argument in principle against the attempt to formulate plans and
rules in advance of action. The alternative to strategic decision-making is to drift in a sea
of problems which one cannot understand and solve properly, i.e. within a framework
outlining the linkages between them. Strategies are guesses as to this framework. The fact
that they are not always right is, however, a poor argument against making guesses. So,
the differentiation between tactical and strategic decisions is a response to two pressures:
the shortage of time and the need to see things in their context. Strategies drawn up some
time in advance of action are therefore a way to (a) cope with the pressure of time, and
b) provide a framework for decisions concerning action. Their value of course depends
ultimately on the improvements to action which they afford. But, for reasons outlined
in this section, this can never mean that strategies and action should be collapsed into
one, as Friedmann (1969) once tended to suggest. Strategies must come before action.

2.2. THE QUEST FOR FLEXIBILITY

By now, the root cause of the quest for flexibility should be evident: if decision-makers
were able to explore problems to the full as and when they arise, then there would really
not be any need for it. They would simply make the best decisions available. Naturally
they would limit themselves to matters which must be decided immediately knowing that,

*) For example Vickers (1973) distinguishes 5 levels of societal control which could be used to analyse
types of policy and decision, ranging from “control by self-determination” to innate response”, and
other “systems theory” models are differentiated, in a similar way.

***) Dutch local politics provides examples. Many colleges of “Burgomaster and Wethouders” have recent­ly
been formed around (multi-)party platforms (so-called programmes). But they often find it
difficult to stick to these during their terms of office leading to conflict with the rank-and-file of
the various parties who are opposed to any departure from the lines indicated in the programme.
if change occurred, they would, once again, review the situation to the full. This is the idea behind certain concepts of process planning perceiving planning as reacting to changing circumstances in the same automatic fashion as a skilled driver adapting to new situations on the road. McLoughlin’s vision of the planner as a helmsman steering the city is a case in point (McLoughlin, 1969). The quest for flexibility only arises because decision-makers cannot do all this, because decisions pertaining to action must be taken some time in advance. Such (strategic) decisions necessarily rest on incomplete knowledge of the situation as it presents itself at the time when they take effect, i.e. when the more tactical decisions are made. This causes problems which Friend (1975) describes as the “attrition of an established policy over time”. We ascribe it to the complexity of the problems which planning is attempting to solve *).

One could also express this problem in the following terms: there is always a gap between what is known and what should be known for a proper strategic decision to be made. For the purposes of this research note, flexibility is therefore taken to mean the ability of a planning system to bridge this gap by adapting and/or changing rules and plans previously conceived in efforts to cope with unforeseen circumstances whilst making tactical decisions.

It should be noted that this concept of flexibility concerns planning systems and not particular plans. Although the two are obviously related, since planning systems are striving towards flexibility by, amongst other things, producing flexible plans, there is a difference between the two. The flexibility of particular plans whether they preclude fewer options for the future etc. than their alternatives, can only be determined from case to case using methods of “uncertainty management”, the application of which has been pioneered by Friend and Jessop (1969). But the flexibility of planning systems means more than that. It refers to all the general features aimed at retaining their future freedom of choice. The next sub-section gives an overview of the most important of these. Each of them can become a potential object for efforts to promote the flexibility of planning systems.

2.3. FACTORS RELATING TO THE FLEXIBILITY OF PLANNING SYSTEMS

From what has been said above we may conclude that the first factor relating to the need for flexibility is speed of decision-making itself. The slowness of decision-making procedures creates the need for it. Increasing speed of decision-making should consequently obviate this need and must count as a chief strategy to deal with the problem of flexibility.

But, this will never suffice. There will always remain a need for strategic rule- and plan-making decisions in advance of action. Reducing the gap between tactical and strategic decisions is therefore the second strategy aimed at achieving flexibility.

*) There is, again, a slight difference between our interpretation and that of Friend. According to him, there are three factors undermining policy: turbulence, i.e. constant change even of the ground-rules of policy-making; complexity making it inherently impossible to draw up policies attuned to the full variety of situations in which the need for decisions arises; and the general responsiveness of the policy-system to pressures generated on the grass-roots level. In our view it would, however, be more correct to put complexity first and treat the two others as its derivatives. If complexity were not a basic fact of life in decision-making, then there would be no need for ground rules in policy-making, and little need for changing them. There would simply be one right way of looking at things, making value-standards, and with them politics and a responsive policy-system, redundant. It is precisely because reality is complex if measured against the feeble instrument of the human mind that there is scope for different interpretations, and with it scope for change.
2.3.1. INCREASING SPEED OF DECISION-MAKING

Increasing speed of decision-making as a way of reducing the need for flexibility applies to both tactical and strategic decisions. In both cases, a substantial time-lag increases the chances of unforeseen change whilst a decision takes effect. In addition, considerable time-lags built into the procedures of planning, because of the obstacle they present to really speedy reactions to change, will act as a damper on any efforts to achieve whatever flexibility is needed. Low speed of decision-making therefore creates the need for flexible “process-planning” designed to cope with uncertainties on the one hand, and acts as a constraint on it on the other. It thus presents a formidable dilemma for planning (Faludi, 1973).

At least three ways of reducing the time needed in decision-making are conceivable: improving the technology of decision-making; shortening procedures; avoiding decisions. Each will be dealt with in turn.

Improving the technology of decision-making.

Many efforts in the recent past have been made to improve the technology of decision-making. No attempt will be made to review these. Merely to illustrate the optimism with which potential technological improvements were occasionally viewed, it might suffice to recall McLoughlin's vision of how tactical decisions might be linked with strategic rule-or plan-making in a computerised planning office. In his first book, full of enthusiasm for systems analysis and its application to physical planning (McLoughlin, 1969), he outlines how a development control decision for a piece of housing development might be made by using a range of computer models devised previously in the course of drawing up the development plan. Using these models, the development control officer would obtain almost instant information about the effects which the proposed development would have on, for example, trip generation, and with it on the assumptions underlying the development plan. It is obvious that, under such circumstances,

(a) there would be less need for making binding decisions in advance — whether the piece of development was permitted or not could depend upon its effects anticipated at the time when the application came in, and not on a land-use plan drawn up previously;

(b) decisions, at least as far as the considerations built into the models are concerned, could be made more speedily.

Such optimism has been replaced by scepticism concerning the potential of decision-making technology to substantially improve planning. This is probably a healthy reaction to the over-enthusiasm which existed before, but it should not lead us to reject the line of technological improvement altogether. Where knowledge about subject matter is firm and a consensus exists about desirable ends, there may be scope for it. However, the issue will not be pursued any further, because, with few exceptions, we have as yet seen little evidence of technological improvements being tried in Leiden. Although the general impression of Dutch planning is that its higher échelons show some of the same optimism which has characterised U.S. and U.K. planning in the recent past, at present there seems to be limited scope for technological improvement on the local level. The factors responsible for this remain to be investigated, but the small average size of Dutch local authorities, and their manpower situation, may have something to do with it *).

The one example of a recent modest technological improvement in Leiden reported in research note 4, network planning, seems to have been effective only because of (a) the

*) It is worth noting that there are proposals for reforming Dutch local and provincial governments. These proposals aim amongst others at amalgamating small authorities. Planning considerations have played a major part in drafting them.
personal skills of those operating it in managing procedures, and (b) the powers backing
them in their efforts to get the projects concerned off the ground. We therefore think
that organisational and political questions dominate technological ones in determining
the flexibility of Dutch local planning, and it is to some of these that we turn.

Shortening procedures.

Where individual rights are affected, there are often statutory time limits within which
procedures must come to a conclusion. The same goes for plans submitted from lower to
higher authorities for their approval. One seemingly simple way of speeding up procedures
would be to reduce those time limits.

However, the scope for improvements in reducing statutory time limits may be limited.
In both case studies conducted thus far we observed that the existing time limits were
exceeded without much ado. Applicants were disinclined to take the municipality to task
for this. As Van Gunsteren (1972) argues, public authorities wield so many powers as to
make applicants disinclined to insist on their rights for fear of losing out in other fields.
For instance, in the cases reported in research notes 3 and 4, the municipality was quite
willing not to enforce certain requirements in turn.

There seems, indeed, a sort of understanding present in Dutch local planning that formal
requirements are to be underplayed, an understanding which anybody with a stake in it
would only contravene at his peril *).

Also, for statutory time limits to be cut, there needs to be proof that reasonable decisions
can be made within the new, shorter, period available. Having to grant applications if the
limit for a decision is exceeded, or refusing to approve a plan for the same reason, are
both unsatisfactory prospects. We therefore turn to other approaches to be taken either
independently or in support of efforts to reduce statutory time limits.

The first of these is that of streamlining procedures by conducting the various investigations
and negotiations involved in the making of decisions in parallel rather than in sequence.
Of course, this requires advance preparation involving, as the speeding up of things general­
ly does, additional manpower and expense.

A special form of streamlining is that of early consultation with all those who will wish
to exercise their influence on a decision anyhow. An applicant will thus sound out a plan­
ing authority before making an application, whilst the planning authority in turn will
usually consult with higher authorities so as to obtain their early approval shortly after
finalising a matter in their own mind. The same goes for consultation with potential applic­
ants, who also wield the power, at least, to hold up things and, at most, to get decisions
repealed altogether. The indications are that the early enthusiasm of planners for public
participation was indeed partly motivated by the thought that it would reduce the number
of appeals and thus speed up the implementation of plans (Broady. 1968).

As is well known, such hopes based as they are on a consensus view of society, have not
always been fulfilled. In any case, participation and indeed consultation generally, is rapid­
ly becoming a field calling for separate attention, and thus for manpower with a specific
sort of skills. The recent literature abounds with statements to this effect, sometimes put­
ting considerable emphasis on the ability to put up with uncertainty and stress (e.g. Fried­

*) As other research (e.g. Planning in kleinere plaatsen, 1975) suggests, the same applies mutatis
mutandis to the relations between municipalities and provinces. The latter have a considerable
say in the granting of subsidies. This may make municipalities disinclined to complain about
the provinces exceeding the statutory time limits within which plans must be approved. That such
periods are regularly exceeded may be gleaned from the table in section 4.2.1. giving the average
time for provincial approval as twelve months plus. The statutory limit is itself twelve months!
In Leiden, we have also had the opportunity of observing such skills in practice, and more will be said about this later in the research project.

However, such skills are scarce and tend to be conducive towards advancement in organisation. Where tactical decision-making is the poor relation of strategic rule- and plan-making, this tendency will therefore militate against flexibility of decision-making. McLoughlin (1973) voices concern about this as far as British development control is concerned. The problem may also exist in Dutch local planning where the equivalent of the development control section, the building inspectorate, is even farther removed from plan-making and is not normally manned by planners whom one would call professionally qualified in the British sense.

Also, the inherent difficulties of raising the qualifications of manpower in the short- and medium term apart, sufficient means for doing so are unlikely to be forthcoming in this day and age of growing scarcity. Therefore, another way of speeding up procedures will remain attractive to those concerned with the functioning of planning systems, despite possible objections from a democratic point of view. This is to cut out whole parts of the decision process through limiting possibilities for appeals. The report by the Planning Advisory Group (HMSO, 1965) pointed in this direction with its recommendation, partly endorsed by the ensuing legislation, of replacing certain classes of appeals to the Minister by an appeal to be heard before a local inspector. After such an appeal, local authorities would have the power to make the final decision.

Other suggestions resulting from the experience of recent traumatic inquiries go in the direction of permitting only certain classes of objections. As will be seen below, when dealing specifically with Dutch local planning, similar moves are afoot here. For instance, as section 4.2.1. will show, the right of appeal to the Crown which the 1965 Physical Planning Act grants to everybody (and not just to those materially affected) is coming under fire.

Avoiding decisions.

At first sight, the suggestion that avoiding decisions is a way of speeding up decision-making might seem facetious. What is the difference, the reader might ask, between avoiding decisions and letting things drift, i.e. the sort of opportunism which one would not wish to equate, conceptually speaking, with flexibility?

The difference is this: if the avoidance of decisions occurs in systematic fashion, i.e. if it is based on some prior consideration of which decisions can safely be left so as to be able to concentrate on others, then the avoidance of decisions may count as a perfectly legitimate strategy to increase the speed of other, more important ones (and thus to obviate the need for flexibility, as has been argued above).

Development control provides an example. Here, certain types of trivial decisions are systematically avoided. Besides, efforts are made on all levels to make decisions as far down the line as possible. For instance, local plans can now be adopted without ministerial approval in Great Britain. Also, the 1968 Town and Country Planning Act already allowed for delegation of certain classes of development control decisions to officers, a strategy of increasing speed of decision-making greatly emphasised by the more recent Dobry Report (HMSO, 1975)*. Such avoidance of decisions having to be made by upper échelons (where time is at a particular premium) is achieved through delegation (to be dealt with in the next section) in conjunction with a form of differentiation between various sorts of decisions or plans.

*) The Dobry report is quoted merely as an example of one way of thinking about speed of decision-making. The fact that it has been overtaken by events is, in itself, interesting.
Their cumbersome nature, the expenses involved, and the uncertainties inherent in strategic rule- or plan-making decisions suggest that they, in particular, should be kept to a minimum. The practice of decision-making is therefore a far cry from the idea of a fully-developed hierarchy of plans seamlessly covering every possible contingency. As Banfield (1959) argues in his classic essay:

"In general, organizations engage in opportunistic decision-making rather than in planning: rather than laying out a course of action which will lead all the way to the attainment of their ends, they extemporize, meeting each crisis as it arises. In the United States even the largest industries do not look forward more than five or ten years. In government, the American planning horizon is usually even less distant . . ."

Except where it helps them in coping with some pressing problem (e.g. in gaining control over some threatening development, in fulfilling the most urgent need for coordinating tactical decisions, etc.) those involved in actual decision-making, be it in public or in private organisations, therefore often regard planning with scepticism. This puts into perspective the persistent difficulties which governments have in getting local authorities to comply with legal requirements to make land-use plans, or review them at regular intervals once they have been made. It also explains why the introduction of such planning from above is often accompanied by a good deal of cajoling, and why the object of drawing up a plan sometimes seems to be to obtain the subsidies and legal powers that go with it rather than the guidance which such a plan provides for action.

But how can one legitimately avoid strategic decisions? In view of what has been said above, one can only do this by isolating those types of strategic decisions which are least urgent for the time being. In this way, one can concentrate ones attention on the others and thus have a better chance of making more speedy decisions than otherwise. In fact this amounts to developing a second-order strategy governing strategic decision-making. This leads to what has been described before as the development of a battery of decision-making instruments on various levels. On each higher level (e.g. the making of a land-use plan), the same pressures occur as on the tactical level (e.g. development control). There is a shortage of time on the one hand and the need to see things in context on the other. These twin pressures make for the isolation of those issues which could be considered in advance even of strategic decisions. This results in the introduction of a second, still more strategic level of decision-making in turn. The products of decisions on this level are yet broader strategies designed to provide a framework for decision-making on the next-lower level of generality. Within this framework, priorities can then be set and the making of such (time-consuming) decisions avoided which are not immediately urgent.

A good example of an effort to introduce a second strategic level of decision-making is, of course, the P.A.G. reform, with all that followed (HMSO, 1965). The argument behind it was indeed that of the need to increase the speed with which (in themselves strategic) development plans were adopted and, in particular, approved by differentiating between structure plans and local plans. "The corridors of power in Whitehall were being choked with detail", as Heap (1969) put it, and structure plans were to put an end to it by limiting the number of considerations going before the minister, thus making his job, and that of his advisors, easier. It was thought that this would significantly increase the speed with which structure plans could be adopted.

However, there is an inherent dilemma in every sort of strategic decision-making. It will be remembered that the reasoning behind the introduction of a strategic level of decision-making is that it is impossible to go through all considerations relevant for making decisions within a reasonable period of time. Decisions must therefore be taken in sequence, and the uncertainty ensuing from the taking of decisions in advance of action accepted as an inevitable cost attached. This applies, even more so, to second-order strategies such as
structure plans. Only, in their case, uncertainty tends to be compounded by their distance from action and thus more obvious to those concerned with their implementation and/or those affected by them. Friend (1975) describes the ensuing conflict as that between the ambiguity and specificity of the statements of which a structure plan document consists. The same conflict might, in our terms, be described as that between the desire to avoid decisions on the one hand and the pressure for taking such decisions on the other. Examples are numerous. For instance, one of the major decisions reflected in a structure plan is that of where to indicate an action area where major change, by development, redevelopment or improvement may be expected:

"Action areas, it should be noted, are to be indicated, not defined. This deliberate wording was chosen for two reasons. First, if the boundaries of an action area were to be defined precisely and be subject (as part of the structure plan) to ministerial approval, this would involve the very thing which the new system is designed to avoid: detailed consideration by the Minister and the embodiment of inflexible proposals in a statutory document. Secondly, it was thought likely that it would intensify the problems of planning blight. If boundaries were drawn on a map they would most probably have to be redrawn when more detailed plans were prepared. Thus some people who thought they would be affected would find that they had been misled, and others who thought they would not be affected would find that they were in fact within an action area. Objections would be made to a structure plan on the basis of individual interest rather than on the basis of the general nature of the proposals." (Cullingworth, 1970)

Thus, the case for ambiguity, e.g. in indicating action areas, seems formidable. However, this neglects the emotional and other costs of uncertainty created by the quest for flexibility which Buit (1975) identifies. Those who suffer these costs may rightfully object against the avoidance of decisions. The matter is by no means clear-cut. As Buit concludes in his inaugural lecture:

"For those interested in expansion, locational and spatial flexibility and inflexibility of the existing physical environment can both provide an efficient weapon for attack (for those interested in conservation an efficient weapon for defense) depending on which of the two offers the greatest chances of goal-achievement in the concrete situation under consideration."

Where the battle-lines in a conflict are drawn therefore very much depends on where the interests lie. Planners involved in drawing up structure plans will probably lean towards ambiguity, and their challengers in an Examination in Public procedure to which British structure plans are subjected might be pressing for specificity. However, as Friend argues, pressure for specificity might equally come from within local authorities, and that for ambiguity from without:

"To the bureaucrat seeking to apply clear rules to each situation which arises, and thus to protect himself from any suspicion of unfairness or favour, specificity of policy stance may indeed be highly valued, but to the entrepreneur whose assets are at stake, it may sometimes be more important to retain the freedom to negotiate over policy interpretation, stressing the features of his own particular case which undermine the classification scheme on which the policy guidelines are implicitly or explicitly based."

Ambiguity and specificity can be described then in terms of the conflicting pressures for flexibility and commitment. Commitment is an attitude to a plan or project on the part of those who are actively involved in bringing it about, as well as a way of characterising major investment or other decisions already taken *). The fact that commitment has been

*) In our research so far, both meanings of the term "commitment" have been demonstrated. The role of individual actors in promoting development through generating commitment is a feature of all the case studies undertaken to date. In addition, we have found a number of instances where heavy initial (financial) commitment has proved to be a major barrier to flexibility thereafter.
made means that any subsequent change of direction will have costs attached. These may be tangible, financial costs, or they may be intangible but important penalties like loss of face and credibility for those responsible for generating political support for the project in question.

The saga of the Third London Airport can be analysed partly in these terms — from the early sixties until the setting up of the Roskill Commission one of the main reasons for the continued support for an airport at Stansted may well have been the fact that so many politicians and civil servants were committed to the project. And, of course, the longer a commitment has been made to a project, the greater the costs of abandoning it, which in turn lead to a strengthening of commitment.

Because uncertainty is a feature of strategic decision-making and not just of structure planning, the conflict between the need for commitment and specificity on the one hand and ambiguity on the other, (i.e. the conflict between the desire to avoid decisions and the pressure for taking them) will always put limits to the degree of flexibility which can be achieved. It can be argued that the degree of finality of the commitment arising out of strategic decisions also has a bearing on this. Finality may reach from purely advisory plans which, because of the absence of any serious consequences attached to them, may arouse little controversy and thus be easily adopted, to the plan indicating building lines, height and density of development, materials etc., with each regulation having the full force of law behind it.

It is obvious that a binding plan affords less flexibility than a less binding one. Quite apart from the possibility of departing from a plan which is not final, the binding plan tends to be fought over more vigorously, thus increasing time needed for decision-making with all the detrimental effects which this has on flexibility. Planners will therefore seek to avoid binding plans for as long as possible, which explains the popularity of non-statutory plans which McLoughlin (1973) comments upon with some concern (see also section 4.1 below).

As indicated in the introduction, flexibility seems to constitute a more serious problem for Dutch than for British planning. If this is so (and the case has not yet been proved) then we surmise that this has something to do with the binding nature of plans, our impression being that the Dutch and the British planning systems vary significantly as far as this important aspect is concerned. In the British system, the time-honoured principle of deciding each case on its merits weighs heavily. Friend (1975) describes how this principle becomes operative in structure planning when people likely to be affected probe the degree of commitment behind policy statements:

"... the experiences of the Examination in Public procedure yields many instances in which the formal response is expressed in terms of "treating cases on their merits", or some similar phrase which in effect retains the full discretion of the policy-maker while perpetuating as much uncertainty as ever among those affected. Such ambiguous statements can indeed sometimes be justified in public, especially where it can be claimed that the issues concerned are so complex, and the basis for prior classification of future situations and response so tenuous, that it would be a mistake to articulate a clear statement of stance within the imposed timetable of the policy design process. Indeed, in the Examination in Public procedure, there was at times a disconcerting tendency for the arguments for retaining flexibility and ambiguity to become so pervasive as to erode much if not all of the intended influence of the structure plan as a vehicle of policy design."

(italics AF/SH)

Of course, irrespective of this principle, strategic rules and plans certainly exist in British planning and do play a role in tactical decision-making. Development control decisions are, for instance, made having regard to the statutory development plan. But the latter does
not have the same binding force as its Dutch equivalent. In Dutch planning, the principle of deciding a case on its merits only becomes operative in residual cases where there are no predefined rules, or where there is a multitude of such rules creating some room of manoeuvre for the decision-maker. However, these are exceptions to the rule. This rule in Dutch, as in continental planning legislation generally, is that decision-making should conform to what Grauhan (1969) describes as the **hierarchical model of a normative order**: particular decisions should be made by *deducing* them from principles as laid down in rules and plans previously defined. Because of the importance of this idea, and of that of legal certainty to which it relates, in preventing flexibility in planning they will be treated in some depth.

Grauhan demonstrates how German physical planning reflects the hierarchical model of a normative order. Since a close affinity exists between Dutch and German thinking concerning the legal and constitutional aspects of administration (Van Gunsteren, 1972), the following statements might apply with minor modifications to Dutch planning as it does to its German counterpart:

"According to the concept of a hierarchy of norms . . . the 1960 Federal Land Use Planning Act located the local land-use plan firmly within the framework of a hierarchy of state, regional and local plans which form a coherent pattern from the abstract to the concrete. Finally, the 1965 Federal Act on Physical Planning . . . provided this edifice with a superstructure of some general planning goals directly linked to the immutable constitutional principles embodied in the Basic Law. This corresponds to a judicial concept of planning which reflects the continental urge for codification and which has been formulated by Joseph H. Kaiser: "Planning is the systematic design of a rational order based on all relevant available knowledge." This rational order presents itself as a process of rendering fundamental general and comprehensive normative principles increasingly more concrete . . . This deductive concept of planning assumes the existence of a general and comprehensive plan at the top of the hierarchy which lends itself to being implemented deductively by lower-order and more detailed plans."

Grauhan continues by pointing out how badly such a form of planning, built on the assumption of certainty and specificity of the principles established on higher levels copes with conflict and change. This theme is explored in great depth by Van Gunsteren (1972). In his thesis on "The Quest for Control: A critique of the rational-central-rule approach in public affairs" he deals with the assumption of certainty of Dutch administrative law and how it is related to the assumption of a hierarchy of norms. He traces both to the development of the German concept of the "Rechtsstaat" (a state devoted to the rule of law) in the nineteenth century. As against England, where a coalition of the bourgeoisie with radical democrats has led to a democratic constitutional regime where the emphasis lies not only on freedom from interference by others but also on the freedom to have a say in political decision-making, in Germany the bourgeoisie was less powerful:

"Here it had to content itself with the legal protection of its economic freedom and it did not succeed in acquiring an active role in the exercise of political power. The result was a liberal-constitutional regime with emphasis on negative freedom only. Here the notion of the Rechtsstaat developed, which is based on the distinction between the legal form and the political structure of the state . . . This notion of the Rechtsstaat became very influential in the Netherlands."

Van Gunsteren describes the features of the *Rechtsstaat* as including the following: a constitution, separation of powers and individual human rights: "From these follow other features like the central role of legislation, administrative authority based on enacted law only, judicial review of administrative action by independent courts, the principle that no encroachment on liberty and property can be made except by way of enacted law, and the equality of all citizens before the law." He also points out the growing importance of central authority and legislation as the "single most important guarantee of certainty in interaction with the administration . . ."
Much as Grauhan, Van Gunsteren is concerned with the inadequacy of the concept of legal certainty as it pertains in a "Rechtsstaat". He claims that rationality and certainty have parted company in the twentieth century. His reasons will be stated because they may explain some of the difficulties which Dutch planning faces, being (as one might expect of planning in a "Rechtsstaat") heavily concerned with affording legal certainty to the individual citizen. Also, some of Van Gunsteren's examples are of great relevance to physical planning:

"Given his own plan of action, it becomes more and more difficult for the citizen to know from the text of the enacted law what this relation with the administration will be. Of course there always comes a time when he knows what the administration is up to. However, in the Rechtsstaat construction this certainly should be available before the citizen initiates a course of action which will engage him in certain relations with the administration. The actions of the administration should be predictable and reliable, so that they can be rationally incorporated by the citizens themselves in their plans of action.

More specifically the lack of orientation provided by the enacted law can be analysed into a number of partly overlapping factors. In the first place the enacted law itself provides insufficient orientation. This is so because the laws are numerous (1), varied (2), vague (3) and changing frequently (4). Moreover there are factors lying outside the text of the enacted law which prevent a smooth transition of the statutory message (5). Finally the combined effect of these factors is itself an independent determinant of legal uncertainty . . . (6).

In the second place there are a growing number of important relations between citizens and administration which are not, or not nominally, governed by enacted law . . . "(*)

With the exception of the "Hinderwet", i.e. a body of factory legislation sometimes used in conjunction with planning legislation and often administered jointly with the latter by the building inspectorate, the examples relevant to physical planning fall under what Van Gunsteren describes as relations between citizen and administration which are not, or only nominally, governed by enacted law. Most fall under what he describes as the increase in "goal programmes: administrative investment policies, the encouragement of economic activities in certain regions or sectors of the economy etc. Of course, the promotion of physical development on part of local authorities also falls under this category. About these goal programmes, Van Gunsteren states the following:

"The coming of the welfare state implies that the state engages in other activities than the protection of the citizen's liberty. As far as the activities of the administration are programmed by the legislature, this often no longer takes place in the form of a conditional program. Goal program- mings seem rather needed to enable the administration to function effectively. The legislature states, or approves of, a rather broad and vague set of goals, and provides the administration with an array of means to realize these . . . One result of all this is that we are confronted with a multitude of new ways of communication and control, which lie beyond the reach of the traditional Rechtsstaat . . . "

In view of this it is not surprising that the place of plans (i.e. goal programmes) in the system of law should have caused so much concern among legal theorists. Because physical planning has developed some time in advance of other forms of planning, the problem has been recognised in this particular field earlier than in others. A considerable body of literature in legal theory devoted to this problem exists both in Germany (e.g. Vereinigung der Deutschen Staatsrechtlehrer, 1960) and in the Netherlands (for a recent review see Koeman, 1974). The controversy rages between basically three groups of authors, i.e. those seeing plans as primarily forms of legislation, those identifying them as executive acts, and those viewing them, as Van Gunsteren apparently does, as new legal instruments in their

*) As our case studies indicate so far, the law is even too complex for the authorities themselves to handle. Many procedural uncertainties exist leading to mishandling of certain matters. Case studies conducted outside this present project confirm this. (See Planning in kleine plaatsen, 1975).
own right. In a system putting such a premium on legal certainty and the protection of individual rights, thus making it imperative that stringent controls should exist on any act of public authorities, this question becomes indeed paramount since there must be a different form of control, depending on which of the three views prevails.

This problem has not yet been resolved. It illustrates the difficulties continental legal thinking has got itself into. We shall, however, refrain from taking it any further. Nor shall we trace Van Gunsteren’s argument beyond his diagnosis of the difficulties citizens and administrators face in countries where legal and constitutional thinking is based on the nineteenth century idea of the “Rechtsstaat”. Suffice it to say that he advocates its modification, and, with it, a re-definition of what legal certainty means, on lines which, like those taken by Grauhan, resemble cybernetic principles of amplification. Since this involves, amongst other things, delegation and the exercise of discretion instead of the mere implementation of guidelines received from above, we shall refer to both authors again in the next section when dealing with these as strategies for increasing flexibility. A thorough discussion of the important principles which thus arise will, however, have to wait until a later phase of this project.

With this, the discussion of ways and means of obviating the need for flexibility through increasing the speed of decision-making comes to an end. It is obvious that neither of them offers more than marginal improvements: technological improvements because the conditions under which there would be scope for them (i.e. firm knowledge of what is involved in the substance of the decisions made, and consensus about ends) just do not exist; shortening procedures because decision-making in a democracy simply takes its time; and avoiding decisions because of the pressures which exist for making many specific and binding decisions on complex matters. Because of the slim chances of effectively reducing the need for flexibility in decision-making through increasing its speed we shall have to look into how to achieve flexibility through other means.

2.3.2. REDUCING THE GAP BETWEEN TACTICAL AND STRATEGIC DECISION

Flexibility was taken to mean the ability of a planning system to reduce the gap between tactical and strategic decisions. The gap may be measured in terms of (a) the time elapsing between the making of strategic rules and plans and the taking of tactical decisions based on them, and (b) the distance, in terms of the levels of organisational hierarchies, between the various decision-makers involved in the two types of decisions. To reduce it, we may (a) systematically delay decisions and (b) delegate them. Each of these approaches will be dealt with in turn.

Delaying decisions.

Where it seems inopportune to avoid decisions altogether, one may achieve flexibility by delaying them for as long as possible. Since the uncertainties surrounding, decision-making results to a considerable extent from the time-gap between when a decision is taken and when it becomes effective, delaying decisions until they are urgently required seems a sensible way indeed of reducing them. After all, new information might lead to changes in the plan. This is, of course, the rationale of process planning, and delaying decisions must count as an integral part of it. But it will be observed that the line between avoiding decisions and delaying them is difficult to draw in practice. Delaying tactics may be used to avoid decisions for the time being (but still recognising that they will have to be taken later on). Decisions which one has tried to avoid for some time might still have to be taken after all, so that a strategy of avoidance amounts to no more than a delay. Certain measures, such as, for instance, the identification of action areas, may therefore count as examples of both avoidance and delay of decisions, depending on the angle from which one looks at it. Avoidance, it will be remembered, is a way of speeding up decision-making through not making decisions which are not absolutely urgent. The deci-
ions which one has thus avoided might still have to be taken later but this is neither here nor there. Delaying decisions follows a different intention altogether. By reducing the time-gap between decisions and their effectuation, it aims at improving decisions, not at speeding them up.

Of course, all the usual pressures occur with respect to the delay of decisions. As far as strategic decisions are concerned, the delay must certainly not be too great lest one should come into danger of losing the advantage of the sense of direction which they afford. Also, delaying them until shortly before the tactical decisions they are designed to guide may generate the very information overload in the mind of the decision-maker which the differentiation between the two types of decision is designed to avoid. Loss of the sense of direction and information overload may result in opportunistic decision-making. But, as stated in the introduction, although probably often unavoidable in practice, opportunism should not be mistaken for flexibility. Flexibility as a problem only arises in the context of the making of strategic decisions, and thus only where a need for them has been firmly recognised. Delaying decisions as a systematic strategy for achieving it therefore involves, as other similar strategies do, striking a balance between this need and the disadvantages arising from the uncertainties attached to early commitment.

Credit for formulating this problem goes to Friend and Jessop (1969). They describe it as the "problem of selecting immediate commitments at any particular point in time, taking into account the balance of advantage between the pressures for commitment, on the one hand, and the retention of future flexibility, on the other". However, as the following quotation shows, in their concern for the problem of commitment and flexibility they focus more on what we term tactical rather than strategic rule-or plan-making decisions:

"... it is important to draw a distinction between the problem of expressing preferences within an extended decision field, including some sectors where full commitment may be at present unnecessary, and the problem of selecting a set of immediate actions to be undertaken in the more urgent of these sectors ..." (italics AF/SH)

Also, as later sections devoted to its analysis show, they bring this problem down to what we termed the flexibility of plans, as against the somewhat broader notion of the flexibility of planning systems with which this paper is concerned. They lay bare the rationale of delaying decisions particularly well, nevertheless, and on this they should be quoted:

"... there may be circumstances in which the passage of time will itself operate so as to improve the basis of decision: with every week, month, or year that passes, new information about certain facets of the community system may materialize, and more credible predictions about its future may become possible."

Also, they show concern for the flexibility of strategic as well as tactical decisions. In a section on "adaptive planning", a concept which co-incides with what has been described as process planning above, they say:

"In public planning ... it is exceptionally difficult to formulate strategies in advance which are sufficient to cope with all conceivable circumstances ... In these circumstances, planning must become in some degree an adaptive process ...”

In the course of this argument, they finally state pointedly why adaptive planning should not be equated with opportunism:

"This does not necessarily mean that the process has reverted from one of planning to one of unco-ordinated short-term response: by adopting a strategic approach, involving formulation and comparison of possible solutions over a wide decision field embracing anticipated as well as current situations, the governmental system may find that it is led to select a very different
set of immediate actions than would otherwise have been the case. For instance, the most im-
mediate attractive solution to a problem of coping with increasing local demand for technical
college or hospital facilities might be to extend an existing group of buildings; but this might
limit the scope of further extensions in the future, and a strategic approach might reveal that
a move to a new site would allow greater flexibility of future choice in response to changes in
circumstances which cannot yet be clearly foreseen."

The reader will have observed that the example quoted in the previous paragraph again
refers to the flexibility of tactical decisions, i.e. of the (alternative) "commitment pack-
ages", to use the more recent terminology of the Institute for Operational Research from
where this work comes (see e.g. Hickling, 1974) of either extending an existing group
of buildings or going to a new site. There is less said about increasing the flexibility
of planning systems through delaying strategic decisions. But the example which they
quote in the paragraph that follows may be interpreted as just that. They refer to the
proposals of the Planning Advisory Group to differentiate between "urban structure maps"
and "district plans" on the one hand and more detailed "action area" plans for areas where
"pressures for action and statements of intent were currently seen to be strongest" As
against the older system of "Town Maps", this represents an example of deliberately delay-
ning many decisions concerning areas outside the "action area".

The name "action area" illustrates the argument about delaying decisions particularly
well. They are areas in which development (action) is reasonably certain to take place in
the near future, usually within a maximum of ten years. Although there will, obviously,
still be uncertainties remaining about this development and its future use (thus making it
advisable that "action area plans" too should, in their own way, be flexible, i.e. contain
commitment packages which keep a maximum number of future options open), these
uncertainties are less than those pertaining to other areas where development, if any, is
not expected to take place until much later. What better solution than to delay making
any definite pronouncements about development outside action areas until such time that
it is actually on the cards and uncertainty thus reduced?

Of course, as with the avoidance of decisions, considerations as to which decisions to delay
should be made within some strategic framework. Systematically delaying decisions thus
involves the formation of a complex instrumentarium of decision-making with various
levels of strategy. This is all the more necessary, because much as their avoidance, delay-
ing decisions might have adverse consequences for those affected. "Planning blight" is the
long shadow which planning proposals, even (and perhaps especially) those for the longer
term which are thus necessarily unspecific, cast upon the existing environment. Of course,
such phenomena exist everywhere, independent of the legal philosophy etc. prevailing.
However, we surmise that in the Dutch system with its emphasis on legal certainty requiring
that people ought to know well in advance what the development of a particular area
will be in future, delaying decisions in such deliberate fashion as described above will be
rejected more vigorously than in Britain.

Delegation.
Delegation is a time-honoured principle in management theory designed to improve decision-
making:

"Classical theory states that decisions should be assigned to the lowest competent level in the
organisation, which is an excellent rule so far as it goes. The closer a decision-maker is to the
scene of action, the quicker the decision can be made. And, of course, if too many decisions
are passed up the line, higher executives will be overburdened and those in the lower échelons
will have little opportunity to use initiative." (Dale, 1965)

However, even in private organisations, determining the lowest competent level (according to Dale "the lowest level at which the jobholder has both access to all available inform-
ation pertinent to the decision and the incentive to weight the factors impartially") is difficult. In public authorities, the issue of the legitimacy of decisions cross-cuts that of competence thus multiplying the difficulties of delegation. This is because the making of decisions, if it is to mean anything more than the mere application of rules previously defined, involves the exercise of discretion in judging the merits of alternative courses of action. As far as non-elected, and thus non-accountable, officials exercising it is concerned, discretion is a thorny issue for anybody concerned with public administration.

There is virtual unanimity about the fact that officials, certainly those at the top, do exercise discretion in preparing and executing decisions made by their political masters. The active role played by political executives, e.g. the “Burgomaster and Wethouders” in a Dutch municipality, is even more evident. However, against the background of the idea of separation of powers (particularly strong, as we have seen, in the German and Dutch model of the “Rechtsstaat”) the legality of initiatives taken, and discretion exercised, by political and bureaucratic executives always causes concern. After all, discretion is something to be reserved for the legislature! What Van Gunsteren (1972) calls the “continuing spell of the traditional Rechtsstaat and the rational-central-rule bias” therefore causes us to shrink from accepting the phenomenon of discretion, and initiative exercised on all levels of public administration, and not just on the top. This spell is therefore in the way of using delegation systematically and openly. It relegates it to the shadowy realm of semi-legality.

Grauhan (1969), in his paper quoted before, describes the problem as follows:

“In this concept of the separation of powers, goal-setting and the planning function would fall to the parliamentary process, while the administrative implementation of programmes determined by parliament would devolve upon the “executive power”. However, as everyone realizes, most of the Bills submitted to the legislature originate from the “executive power”, which thus obviously engages in planning and to a considerable extent also in “goal-getting”. Some people who wish to retain the concept of administration as implementation try to solve this dilemma by drawing a sharp distinction between political “government” and administration by conferring upon the government . . . the function of planning and goal-setting, a function for which “support by the legislature” must be sought . . .

But in practice even this model has long been superseded: in particular contextuating decisions initiating new programmes need more and more extensive and well-planned preparation on part of the administration . . .”

Grauhan then goes on to discuss the idea of certainty built into the model of a hierarchy of norms described in a previous section. Presupposing, as it does, that decisions may be deduced from norms set before on levels higher than that of the individual executive, this idea is opposed to the exercise of discretion and therefore to any true delegation:

“Following the structural concept of the executive as safeguarding legality, German administrative courts have a tendency to reinterpret discretionary rules as norms and to assume that, even under conditions of uncertainty, they therefore predetermine administrative action in the sense of allowing only one correct solution.”

Grauhan advocates a solution on the lines of relaxing the assumption of uniformity and neutrality of the administrative machinery engaged in the preparation of plans, a process with unavoidable discretionary content. He seeks to break the administration open by introducing structural elements into it which are analogous to the parliamentary process. No doubt following Deutsch (1966), he describes these as the creation of multiple centres of initiative, provisions for the articulation of conflict within the administration, and equally for feedback from implementation to plan-making. Thus, the emphasis is on the political nature of the administrative process, and the safeguards suggested for the proper exercise of discretion accordingly those which are deemed to promote the rationality of political choices.
Though Van Gunsteren would probably not oppose this, he puts the emphasis more on the development of judicial reviews, administrative appeals and on more precise definitions of the limits within which discretion may be exercised, the latter point being an interesting one because this is exactly the way in which Dutch physical planning law tries to handle for instance delegation of rule- and plan-making from the municipal council to "Burgomaster and Wethouders" (see the section on the "bestemmingsplan" below). Van Gunsteren thus urges the theorists and practitioners of administrative law to develop and apply their traditional techniques to the problem posed by the exercise of discretion by lower échelons than traditional legal and constitutional theory would accept. He argues that this would *de facto* increase legal certainty, if only one abandoned the idea that such certainty can only come from the top.

Van Gunsteren freely admits that his proposals are exploratory. Although some of them reflect developments taking place in practice, it is by no means certain that they will inevitable lead to the desired results. As we shall see, one of them which is practised in physical planning, administrative appeals, causes delays in the adoption of statutory plans and by this very fact must increase uncertainty. It may therefore be that, as he says, the conflict between general rules and *ad hoc* decisions, between certainty and the exercise of discretion is a false dilemma. In practice, it exists nevertheless. In planning practice, legal certainty is still taken to mean that people ought to know *in advance* what the development of a particular area will be in future. It also requires that, where compulsory purchase powers are invoked, land owners should know *precisely* for the benefit of *what* future use they should give up their property rights so as to give them maximum opportunity to appeal against an expropriation plan or against a compulsory purchase order *).

2.3.3 *SUMMARY OF FACTORS RELATING TO FLEXIBILITY*

The factors relating to the flexibility of planning systems have been identified as (a) speed of decision-making itself (the argument being that greater speed obviates the need for flexibility); (b) the gap between tactical and strategic decisions (the argument being that, the smaller the gap, the greater the chances of flexibility).

*Increasing speed of decision-making* may be done by:

- improving the technology of decision-making
- shortening procedures
- avoiding decisions.

*Reducing the gap between tactical and strategic decisions* may be done by:

- delaying decisions
- delegation.

Obviously, these options often occur in combination. A structure plan indicating action areas combines the systematic delay of some decisions with the avoidance of others (e.g. no local plans may ever be drawn up for some areas never to be developed) within a strategic framework. These two options are accompanied by a third: delegation by which lower échelons are called upon to fill in and amplify the outline decisions made by higher ones.

*) As it happens, this has caused concrete problems in Delft where a statutory "globale bestemmingsplan" has not been accepted by the courts as a sufficient basis for compulsory purchase order, thus undermining the whole rationale behind such a plan of making outline decisions in the council and delegating the rest to "Burgomaster and Wethouders" to decide later, as and when the occasion arises. On this problem see Fortgens (1976).
Because these options often occur in combination, and also because of our still limited overview over Dutch local planning, the following review of flexibility in Dutch planning will not have the same structure as this theoretical section. We shall describe flexibility in tactical and strategic decision-making separately using standard sources instead, but of course always using the framework established in this section to interpret what we find by putting Dutch efforts to achieve flexibility into a theoretical context. A final section will be devoted to practical expedients which often transgress the dividing line between flexibility and opportunism.
3. FLEXIBILITY IN TACTICAL DECISION-MAKING IN THE NETHERLANDS

We shall deal with two types of tactical decisions which from a legal/procedural point of view seem most important: the issue or refusal of a permit to build and compulsory purchase. Because we have not yet been able to study cases in detail where compulsory purchase powers were involved, the emphasis will be on the former. For lack of a systematic overview, other forms of tactical decisions, such as the sale of land to prospective developers, the preparation of land on part of the municipality, budgetting decisions etc. will be largely ignored. The impression thus far is however that in making these decisions municipalities are subject to similar pressures for change in response to new situations arising as is the case with the two examples which we shall deal with in due course. But, tactical decisions of these kinds are subject to fewer procedural safeguards, because they do not usually involve the rights of third parties but only questions such as with whom the municipality enters into contractual relations, and how it spends its resources. There is hardly any occasion to question these decisions. Only the requirement of obtaining the approval of the provincial government remains. However, as often as not, this seems a purely formal affair. The scope for opportunistic decision-making may therefore be greater in the case of these action decisions than in that of the two categories named before. We have, indeed, observed instances of the municipality leaning towards obtaining early co-operation from developers, and there may be more to be reported in future. Certainly where, as reported earlier (*), there is an urgent need for shopping provisions for the growing town expansion scheme of Leiden South West, or where the municipality has invested large sums in the preparation of land, which it must recoup as early as possible, as in the Merenwijk scheme, the pressure to bow to their wishes must be great. There will be more said about this in section 5.

3.1. THE ISSUE AND REFUSAL OF BUILDING PERMITS

The building permit is the lynch-pin of Dutch planning. It links two bodies of legislation, the 1962 Housing Act and the 1962 Physical Planning Act. Van Benthem Jutting (1975) in an article comparing building permits with other forms of administrative decrees describes it as follows:

“For nearly every building a permit is necessary under article 47 (1) of the Housing Act. This permit may only, and must, be refused in those instances relayed in article 48 (1) of the Housing Act. From the words “may only” it transpires that the permit must be issued, if there is no question of any of the reasons for refusal of article 48 applying. If one of these reasons for refusal does apply, then the permit must be refused. This means that the intending developer has a right for a building permit and that the burden of proof for showing that this right cannot be honoured lies with the “Burgomaster and Wet­houders”.”

Building means “the placing, the partial or total erection, the renewing, the altering or the enlarging of a structure”. Certain kinds of works other than building works require a so-called “lay-out” permit (“aanlegvergunning”). As an example of what a “lay-out” permit as against a permit to build involves, a recent Crown decision may be quoted (see Rijks­planologische Dienst, 1975). The Crown quashed a decision to refuse issuing a building permit for a gas-pipe line with a diameter of 900 millimetres. The argument was that such works were not building works and thus did not even require a permit to build. They may, however, be subject to a “lay-out” permit, if the requirement for applying for such a permit has been included in the plan regulations of a “bestemmingsplan”. Apparently, a great number of contentious cases (power-lines, gas fields, etc.) involve such “lay-out” permits, but we have not had the occasion to study any of these.

The reasons for refusal of a permit have already been described elsewhere *). A building permit may only be refused if

* the proposal does not comply with building regulations;
* the proposal conflicts with a "bestemmingsplan";
* special permission required under the Monument Act or under a local conservation bye-law has not been obtained.

In the case of a lay-out permit, obviously, the first condition does not apply and the place of the Monument Act is taken by other conservation laws.

Because of the rigidity of these rules, the task of "Burgomaster and Wethouders" in giving or refusing building permits seems primarily executive. Since they are deemed to follow strictly the plans, regulations and bye-laws previously adopted by the council, this division of responsibilities between the legislature and the executive appears to follow closely the model of the "Rechtsstaat" in the previous section. However, "Burgomaster and Wethouders" also have the power to waive certain conditions, so that their actual role in implementing statutory plans is more important than the executive model would lead one to expect. Within certain limits, they may depart from or amplify plans and attendant regulations. This amounts to delegation of strategic rule- and plan-making within a framework set from above and will be explained in later sections on the flexibility of building bye-laws and of the "bestemmingsplan".

To establish whether he has the right to build, the intending developer must apply for a permit to "Burgomaster and Wethouders". They must give their decision within two months, although this period may be extended under certain circumstances. The following discussion of the process leading up to a decision is based to a considerable extent on work by Kocken (1966). The latter shows particular concern for the tensions generated in practice by the rigidity of the system of Dutch permits. We shall firstly deal with the general problems which he raises and with the practical expedients and proposals for meeting them by a mixture of strategies from delaying decisions to delegating them to officials. Afterwards we shall examine in somewhat more detail how applications for a permit are assessed.

Kocken comments on the system of permits as follows:

"As far as building operations are concerned, the idea still predominates that building without a permit cannot be tolerated. Nevertheless, efforts are made all the way round to help the developer by giving provisional permits and declarations in principle, and this quite apart from promises and agreements made by the municipality in its capacity as landowner. The final permit issued is often nothing but a codification of agreements negotiated beforehand."

In our research to date we found instances where this was fully confirmed. Thus, it can happen that a permit may not in fact be issued before building operations start (as is the assumption in the law) but only during or after. For example, our research has shown construction works beginning several weeks before the issue of the building permit for a project and even an example of a building permit being issued jointly with a certificate, required by law, that the building has been completed according to the regulations. In this instance, the special difficulty is that there is no provision in the Housing Act for changing a permit once it is issued. Thus, in theory, when (as is often the case) building plans have to be changed during construction, a new permit has to be applied for. This occurred when firms interested in buying one or more shops asked for alterations to be made to the plans. In practice, these alterations were allowed to go through after consultations with the building inspector concerned, and the building permit issued was indeed no more

than a codification of informal understandings reached as and when required by the dynamics of the building process.

Some of the difficulties signalled must have something to do with the fact that a permit to build in the Netherlands combines two sorts of tests: (a) whether a proposed piece of development conforms to existing plans, (b) whether certain *technical and design standards* embodied in the building bye-laws are met. The two tests pertain to different aspects of development, aspects which must, furthermore, be dealt with at different stages throughout the process: planning aspects must obviously be looked into before development takes place, but many of the technical considerations can safely be left until later. Indeed, some of them can only be assessed whilst building takes place, e.g. the checking of the re-enforcement in concrete etc. No distinction is drawn between these two types of considerations. The whole process is conceived as a technical exercise imbued with the same rigidity which characterises the approval of building plans under the building regulations in England and Wales. The discretionary element in the planning aspects of a permit to build certainly do not find explicit recognition as is the case in Britain. Where provisions are made for the exercise of discretion, these take the form of exceptional powers conferred upon “Burgomaster and Wethouders” as part of the plan regulations. Since these form part of the “bestemmingsplan”, they will be dealt with below.

Failure to distinguish between these two tests, as is technically the case in England and Wales *), and as suggested by the Van den Bergh commission reporting on possible changes to the Housing Act in the early fifties, has led to the present problems. In terms of the framework set out in the previous section, this amounts to a failure of limiting the initial considerations to the most strategic variables (those relating to the planning aspects of an application being amongst the most important ones of these) and letting these cumulate in a decision in principle about whether to allow the proposed development to occur, combined with systematically delaying all other decisions until the need for them arises out of the building process itself.

The fact that, as indicated by Kocken, Dutch practice often goes in exactly this direction, is a modest vindication of the framework used. One key-factor is the time it takes to draft building permits.

The examples which we have seen suggest that they usually are rather complex documents involving legal technicalities on the one hand and extensive references to building and design standards on the other. In Leiden, they are looked at first in the building inspectorate and in the “Welstandscommissie”, pass through the secretariate of the Department of Municipal Works for drafting, are forwarded by a letter carrying the signature of the Director of Municipal Works to the relevant department of the municipal secretariate where legal technicalities are looked into, and then put on the agenda of the meeting of “Burgomaster and Wethouders”.

This process is apparently as laborious as it seems. Some larger municipalities are therefore prepared to help by issuing provisional permits stating that the developer can start with building operations at his own risk. Such a permit takes the form of a letter from the director of Municipal Works sent as soon as he has satisfied himself that he will recommend issuing the permit **).

*) Building control in Britain falls under the Public Health Act. There may even be separate committees deciding upon planning permissions on the one hand and approvals under the building regulations on the others. Although some authorities may combine the two applications in the interest of streamlining procedures, their spirit is very different indeed. (See Regan, 1973)

**) A similar construction was used in the case reported in research note 4 to allow the developer to begin operations to prepare the land. However, the issue concerned was that of approval of the
Sometimes, permits are also issued for certain building operations – for instance the building of foundations. In Holland, the latter involves ordering piles several months in advance. The intricacy of building operations therefore demands that the authorities should fall into line:

“It is no wonder that the authorities, in particular in the larger municipalities, have to be flexible as far as the start of building operations is concerned. Otherwise they might cause a drastic reduction in the activities of the building industry.” (Koeken, 1966)

Although neither provisional permits nor permits pertaining to certain parts of the building operation have any foundation in the law, they have acquired a quasi-legal status such that the courts are giving protection to those who build trusting that the permit will indeed be issued. This is perhaps an example of what Van Gunsteren (1972) means by the development and adaptation of the concept of legal certainty to meet modern circumstances by, amongst others, recognising the need for informal procedures to augment formal ones, and by setting standards of fairness for the former which are analogous to those which apply to the latter. Help from the authorities (and ultimately from the courts) is all the more important since the actual procedure of obtaining a building permit is a far cry from the simple submission of an application subsequently to be compared with existing plans and regulations such as is the assumption on which this system rests. In Rotterdam, for instance, the applicant might have dealings with, according to Koeken, up to ten officials, leaving much scope for uncertainty, confusion and, from the point of view of the applicant, arbitrariness of decision-making. Although the authorities seem in general prepared to help by giving formal and informal advice and guidance, they obviously have a choice of whether actively to promote an application or to leave an applicant to his own devices. The former is a practice observed in Leiden, where the housing department gets all the other departments concerned around the table to cut through the red tape whenever it thinks that a project is worth promoting, (this incidentally being an instance of consultations in the interest of shortening the time taken for decisions).

Of course, the issue of provisional permits or some such expedient by the director of Municipal Works amounts to *de facto* delegation in the interest of flexibility, especially since the courts are giving protection to those trusting that a building permit in accordance with the provisional permit will indeed be issued by the “Burgomaster and Wethouders”. But delegation in the interest of flexibility is a frequent feature of the whole process of issuing permits anyhow. Though, in principle, all decisions relating to building permits are taken by the “Burgomaster and Wethouders”, the constant stream of applications often necessitates that permits of minor importance be issued by the municipal secretariate using a rubber stamp with the signatures, as required for official communications coming from the municipality, of the burgomaster and municipal secretary. This also happened in Leiden in the past, although not in any of the cases studied to date.

Another, even more frequent, form of delegation is a requirement imposed in issuing the permit that technical drawings and calculations must be submitted to the director of Municipal Works, or directly to the building inspectorate, at some later point in time. Sometimes, the same applies to detailed design aspects. The design of display windows and of a roof extending over the public pavement in the shopping centre Vijf Meiplein *) is a case in point. In these instances, the director assumes the functions of both the “Welstandscommissie” (aesthetic commission) and of “Burgomaster and Wethouders”.

terms of sale by the province. The municipality had no objection against the developer making a start at his own risk provided that the amount agreed for the sale of the ground was first transferred and that other conditions were fulfilled.

*) See “Het voorbeeld Vijf Meiplein”, etc.
To summarise, with Kocken, informality and flexibility in interpreting the law in order to reduce friction characterises the process of building control in the Netherlands. This tallies with our impressions so far, impressions which our informants tended to confirm as reflecting a general feature of Dutch practice. However, in this way, the law achieves the opposite of legal certainty. For instance, both case studies conducted to date provide examples of statutory periods within which permits had to be issued being exceeded by several months. In neither case did the applicant wish to make an issue out of this, nor would it have been sensible to do so pending the outcome of other negotiations. The situation created by such (apparently widespread) departures from the law is ambiguous nevertheless and possibly detrimental to third parties who may not even be aware of such informal understandings as seem to govern the issue of permits. Thus Van Gunsteren’s advice to administrative lawyers to attend to such phenomena seems well to the point.

After these general considerations around building permits, we shall now look into the process by which a decision is arrived at. This involves examination of the application from at least three points of view: town planning, technical and design. Responsibility for the first and the second rests largely with the building inspectorate. On design matters, the “Welstandcommissie”, or aesthetic commission, comes into play.

Under town planning aspects of the decision to grant or refuse an application, Kocken, writing about the regime under the old 1901 Housing Act, emphasises its inflexibility. In the early sixties, before the current legislation had come into force, the Housing Act had virtually lost its grip on fast-changing reality. To meet the requirements of practice, much use was made of the powers of “Burgomaster and Wethouders” to depart, within certain limits, from the expansion plan (article 36 (3) of the 1901 Housing Act), a tendency supported by the Crown and continued in much more systematic fashion (though not entirely to the satisfaction of people centrally concerned with the working of this act such as Brussard, 1971) under the 1962 legislation.

An example of a (modest) departure from an expansion plan was reported in Working Paper No. 9. The director of Municipal Works submitted his report concerning the Vijf Meiplein application to the “Burgomaster and Wethouders” together with a plan indicating where the proposed development differed from the expansion plan. No reference was made to the above article of the Housing Act, but the report simply stated that the overall character of the plan was not at stake and that these departures did not constitute reasons for refusal. This illustrates the discretion of “Burgomaster and Wethouders”, which the 1962 Act is attempting to put on a much more systematic footing. There will be more said about this in sections below.

Even outright departures from statutory plans became almost the rule rather than the exception in the post-war period using article 20 of the Reconstruction Act. Because analogous facilities still exist in the form of article 19 of the Physical Planning Act causing much concern with respect to the legal uncertainty they create, these will be dealt with in a special section below on practical expedients.

According to Kocken, the difficulties of control through the application of rules formulated in advance are particularly great in the case of those technical matters to which the building bye-laws pertain. The last two decades have seen enormous developments in building technology taking place, and the bye-laws and the building inspectorates are constantly running behind. Next to flexible formulations of the bye-laws (allowing for their amplification in issuing permits) to be discussed in one of the following sections, various other methods are tried to meet this problem. Kocken lists external advisers, the issue of summary permits for certain forms of systems buildings etc. Because these concern technical matters with which we are not primarily concerned, these will not be discussed any further.
As far as the design aspects of an application to build are concerned, these are the most
difficult to control through making rules in advance. The discretionary content of aesthetic
judgements is therefore recognised. Unlike before, where in design matters “Burgomaster
and Wethouders” could either simply go by the advice of their officials or appoint a perma­
ent adviser, the Housing Act now requires a special commission (“Welstandscommissie”) to
be set up by every municipality to advise them on the aesthetic merits of applications.
This commission consists of experts, mostly local architects.

In view of the problems which discretion poses for legal certainty it is interesting to note
the unease which exists concerning the “Welstandscommissie”. On the one hand, it might
be said that the issue has been defused by defining the judgements made as a matter for
experts (whilst still reserving the final say for “Burgomaster and Wethouders”). On the
other hand, this very fact causes concern. Negative advice by the Welstandscommissie”
may have serious consequences for the architect. It may even happen that the “Welstands­
commissie” advises a client to look for another designer. The “Welstandscommissie” can
therefore become a means for local notables among the design profession to control who
gets what in terms of commissions. This appears to be the reason why Priemus (1970)
has asked for the abolition of the “Welstandscommissie” calling it a “feudal” institution.

The remedies suggested against its alleged arbitrariness are again characteristic for the
reliance on higher authority for the maintenance of standards and as a safeguard of legal
certainty which, according to Van Gunsteren, characterises the “Rechtsstaat”: the creation
of model rules for municipal aesthetic control and the right of appeal to the full municipal
council embodied in the new Housing Act (see research note 4), and the setting up of
various review panels on a level above that of municipalities suggested by, for instance,
Wessel (1964).

With this we end our description of flexibility in the issue or refusal of building permits.
It should be evident by now that this is not only the lynch-pin of the Dutch planning
system, as far as the control of development is concerned, but also quite probably the
weakest link in an elaborate planning system which, in theory, links development on
the ground via land use and urban structure plans to sub-regional plans and national physic­
al planning policy. With this perhaps somewhat disconcerting note we turn to another in­
strument of Dutch planning used not for the control but for the promotion of develop­
ment: compulsory purchase.

3.2. FLEXIBILITY AND COMPULSORY PURCHASE

The procedures for compulsory purchase of land needed for development have been de­
scribed before in research note 5. Also, in an appendix to Working Paper No. 9 *), mention
has been made of the reasons why compulsory purchase powers are relatively well-developed
in the Netherlands where the costs and the technical difficulties in preparing the land for
building are often considerable.

Compulsory purchase constitutes a substantial encroachment on individual rights,never­
theless, even in the Netherlands. It is therefore surrounded by considerable safeguards for
legal certainty. There is consequently little scope for flexibility in the exercise of compul­s­
ory purchase powers. Indeed, as has been mentioned above, the legal requirements for
compulsory purchase are sometimes even such as to jeopardise efforts to achieve flexib­
ility in other fields, i.e. the “globale bestemmingsplan” seems an insufficient basis for
compulsory purchase.

The only link between flexibility and compulsory purchase exists around speed of decision­
making. Compulsory purchase may last for between 14 and 25 months and may thus delay

*) op. cit.
development. A number of provisions exist to cut this period of time. Firstly, as mentioned in research note 5, the possibility exists to shorten the compulsory purchase procedure to 7 months in areas for which urgency has been indicated in a "bestemmingsplan", a possibility pointing in the direction of British action area plans. Secondly, in the interest of promoting housing development, the requirement of adopting a "bestemmingsplan" before a compulsory purchase order is made may be waived, thus making for considerable savings in time. Finally, the authorities must as a matter of course attempt to arrive at settlements with the owners of the land before going to the courts. This again tends to save time and efforts.

These ways of cutting the statutory period of time for compulsory purchase apart, there also are improvements possible to the technology of decision-making. The close meshing of plan-preparation, compulsory purchase procedures and engineering operations to prepare the land require skills of management. Time-saving networking techniques have therefore attracted some attention in practice (Berenschot, 1970; Kreukels, 1975).
4. FLEXIBILITY IN THE MAKING OF STRATEGIC RULES AND PLANS.

The two most important sets strategic rule- and plan-making decisions with a bearing on the issue or refusal of building permits are those embodied in the building bye-laws and the "bestemmingsplan". Of course, these are not the only ones. The Housing Act names one more: the Monument Act. Van Driel and Van Vliet (1974) list a further eleven acts which may each be of some import for the use of land, from a Burial Grounds to an Air Pollution Act, without even pretending that their list is complete. One is again reminded of Van Gunsteren's complaint about the number and complexity of contemporary laws defeating the spirit and the purpose of the "Rechtsstaat".

However, pending an Urban Renewal Act under preparation, the bye-laws and the "bestemmingsplan" remain the two most important sets of advance rules with a bearing on municipal control of development. They will be discussed in turn.

4.1. FLEXIBILITY IN THE BUILDING BYE-LAWS

Every Dutch municipality must adopt building bye-laws. Many of these have recently been re-fashioned according to the model bye-laws developed by the Dutch Union of Local Authorities. In any case, there are always bye-laws available. Some degree of control can therefore be exercised even in areas where no "bestemmingsplan" is in force. Since this applies to large parts of the built-up areas of Dutch villages and towns, the building bye-laws assume considerable importance even for physical planning, let alone for the maintenance of technical and design standards. For instance, one of the case studies presently under way concerns a home for young adults built recently in the old centre of Leiden, for which there is indeed no "bestemmingsplan". Further consideration of the function which the building bye-laws fulfil in physical planning will therefore have to wait until later.

Even without taking these incidental functions of the building bye-laws into consideration, their formulation involves difficult issues. As indicated in the section on the issue of building permits, building technology is advancing by leaps and bounds, thus making the advance formulation of exact rules a doubtful exercise. According to Kocken (1966), building bye-laws are therefore always a "compromise between the requirements of legal certainty demanding complete and clear regulations and the requirements of practice". The pattern is mostly as follows; firstly, a norm is set; secondly, cases are identified to which this norm does not apply (non-applicability rule); thirdly, the "Burgomaster and Wethouders" are given the power of dispensing with this norm; fourthly, they are given the power to impose further conditions in cases where the general norm is inadequate. This method of attaining flexibility in strategic rule- or plan-making mainly by delegating it to the "Burgomaster and Wethouders" is widespread in Dutch local planning. As we shall see, some of the difficulties of this strategy evolve, as one might expect in a "Rechtsstaat", around their discretion in matters traditionally reserved for the legislature.

Both cases studied to date provide examples of departures from the building bye-laws. On the Vijf Meiplein built under the regime of Leiden's own bye-laws dating from the thirties, the relevant research note may be quoted:

"The plan was also at variance with two articles of the building bye-laws. The first article stated that there should be a separate entrance for every pair of flats and that no block of flats should have more than two floors. It is evident that this article excludes high-rise building, even of four floors. However, the article includes a clause allowing the "Burgomaster and Wethouders" to grant exceptions and the director proposed that this should indeed be done. Because the files contain printed forms with the paragraph in the director's report concerning, amongst others, this particular article, we may conclude that this was a standard procedure."

The second article (also included in the form designed by the head of the secretariate
of the department of Municipal Works) concerned the height of rooms. This was lower than stipulated in the bye-laws, but this condition could again be waived. Because its formulation is typical, not only for bye-laws but also for many plan regulations to be discussed as part of the "bestemmingsplan" below, where attempts are made to impose "objective limits" on the discretion exercised, the clauses of this article relevant to the heights of living rooms will be quoted in full:

"In flats, the height of rooms from the surface of the floor to the under-surface of the beams or the ceiling must be at least 2.90 meter... "Burgomaster and Wethouders" may allow departures... to the extent that the height of living rooms... must not be less than 2.60 meter..."

Even under the regime of the much more up to date model bye-laws, departures are sometimes necessary. Thus, the L2-houses described in research note 4 *) did not conform to the requirement of individual sewer connections and to regulations concerning the position of fire-escapes. Both were waived on recommendation of the director of Municipal Works. In this case, as in the previous one, there were also further conditions appended to the permit to build.

Apart from the latitude which "Burgomaster and Wethouders" therefore have in departing from, or adding to, the requirements defined by the bye-laws, flexibility is also served by the use of terms so vague as to give more room for manoeuvre. Kocken (1966) quotes examples of adjectives such as proper, sufficient, effective, acceptable, admissible, purposive, special, considerable, etc. The model procedures for municipal aesthetic control by the Union of Dutch Local Authorities, being themselves an amplification of regulations in the Housing Act relating to the building bye-laws, provide a case in point: the "Welstandscommissie" should seek to establish whether a proposed piece of development would meet "all reasonable aesthetic requirements". This has since become the normal formula in which the commission couches its advice.

In this context, the issue of specificity versus ambiguity identified by Friend and Jessop (1969) arises. However, the principle ingrained in Dutch legal and constitutional thinking of legal certainty (in physical planning mostly pertaining to land owners and their rights) requires that there should be "objective" limits to the extent to which plans are flexible. It is therefore largely opposed to the use of vague terms and seeks to incorporate precise thresholds beyond which "Burgomaster and Wethouders" may not go, such as the lower limit of 2.60 meter for room heights in the article quoted above. As some of the examples in the section on the "bestemmingsplan" (where the problem appears much more virulent than with respect to the building bye-laws) will show, this tendency works in the direction of yet more detailed plans. By complicating matters and extending the time it takes to formulate and formally adopt strategic rules and plans, it counteracts efforts to obtain overall flexibility.

4.2. THE "BESTEMMINGSPLAN"

This section follows the division between basically two factors pertaining to flexibility introduced in section 2: speed as obviating the need for flexibility, and the various strategies designed to achieve whatever flexibility is needed. As a reminder, the argument goes that the greater the speed (and ease) with which plans can be made, the less need there is to be flexible. Conversely, the more cumbersome planning and plan-reviews, the greater will be the need to build in flexibility. We shall therefore firstly deal with the speed of decision-making concerning the "bestemmingsplan", and afterwards with flexibility in the "bestemmingsplan" procedure.

4.2.1. SPEED OF DECISION-MAKING CONCERNING THE "BESTEMMINGSPLAN"

In an article published soon after the 1962 Physical Planning Act had come fully into operation, Brussard (1971) voiced some concern about the time it took to get a "bestemmingsplan" approved:

"... a certain lack of confidence exists concerning the procedures which were designed to facilitate quick decisions, and those designed to guarantee legal certainty in the Physical Planning Act ... the process of making a "bestemmingsplan" can take many years. Every interested party, and also every grievance-monger who is merely interested in gaining time, can appeal to the Crown with no personal risk of liability and thereby delay the plan for years."

As an article published in 1976 shows, the situation is still substantially the same:

"The introduction of the idea of participation in physical planning practice in the middle of the sixties had its consequence that it now often takes several years before a draft "bestemmingsplan" has travelled to the end of the long road to where it acquires statutory force. The long period preceding this can have as its result that there is little left of the original concept of, for instance, building projects, that land prices and building costs have increased and that a loss due to interest payments has been suffered." (Groeneveld, 1976)

This section will briefly deal with proposals to increase the speed with which "bestemmingsplannen" are adopted. Reference will be made to recent proposals to amend the Physical Planning Act so as to reduce the possibility of appeals, and a report by a working party under the auspices of the Netherlands Institute of Physical Planning and Housing addressing itself mainly to the streamlining of procedures (Werkgroep Versnelling Procedure, 1975). But first, the factual situation will be described.

We have no figures available about how long it takes on average to prepare a "bestemmingsplan". Our impression is that the survey and design work and the consultations involved often take several years *). Once a "bestemmingsplan" is adopted by the council, it then goes for approval to the province. There are no recent exact figures available of the proportion of plans which afterwards become the subject of an appeal to the Crown. Brussard (1971) gives a figure of 10%.

A more recent source (Bouw, 1976) is much vaguer and gives a figure of 10 - 15%.

Recent arguments concerning shortening planning procedures concentrate on this small (but possibly significant) group. This may be because, as research note 5 relayed, where a "bestemmingsplan" is the subject of an appeal to the Crown, the procedure may then take as long as five years from start to finish. A considerable proportion of this time goes to the appeal to the Crown. The following table drawn from Wessel and Fortgens (1975) gives the breakdown as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Crown Decisions</th>
<th>Period of Time Between Adoption of Bestemmingsplan and Decision by Provincial Government</th>
</tr>
</thead>
<tbody>
<tr>
<td>1970</td>
<td>58</td>
<td>11½ months</td>
</tr>
<tr>
<td>1971</td>
<td>90</td>
<td>12 months plus</td>
</tr>
</tbody>
</table>

*) Some consultations are required by law (see Van Zundert, 1973). To illustrate the difficulties, another research project may be quoted. This concerned, amongst others, a case where the "bestemmingsplan" was held up for two years because the (advisory) Provincial Planning Commission failed to give their comments on the draft submitted in fulfillment of the legal requirement of consultation. In the end, the comments they made were marginal. See: Planning in kleine plaatspan, 1975.
<table>
<thead>
<tr>
<th>Event/Decision</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Council decision</td>
<td>1 January 1973</td>
</tr>
<tr>
<td>Decision by the provincial government</td>
<td>1 February 1974 (13 months)</td>
</tr>
<tr>
<td>Action from the Council of State</td>
<td>1 July 1975 (17 months)</td>
</tr>
<tr>
<td>Crown decision</td>
<td>1 December 1975 (5 months)</td>
</tr>
</tbody>
</table>

The total is therefore 35 months, i.e. somewhat less than in the early seventies. As Groeneveld indicates, Crown decisions have tended to come somewhat more quickly recently, and therefore some further, marginal reduction might have taken place since. However, the basic problem remains that "bestemmingsplannen" take an excessive amount of time, in particular where the Crown comes into play.

The Advisory Council for Physical Planning has therefore recommended recently that the right of individuals to appeal to the Crown should be rescinded (Raad van Advies voor de Ruimtelijke Ordening, 1975). In particular, the council recommended that this right should, in the first instance, be taken away from all those whose material interests are not affected. In a later stage, the right of appeal should successively be limited further until it only applies to municipalities, and to the inspectors for physical planning. Letting the provinces have the final say on these matters, the council argued, would conform to the spirit of decentralisation which is one of the professed aims of contemporary Dutch politics.

Groeneveld (1976) quotes the Minister as being in sympathy with this proposal. However, he also quotes recent research findings by Van den Berg and Pronk (1975) which largely invalidate the argument for either rescinding the right of appeal altogether or for limiting it to those materially affected. Firstly, a substantial number of appeals do lead to the repeal of the "bestemmingsplan" concerned. An appeal to the Crown therefore seems far from superfluous. Secondly, by far the largest number of appeals are lodged by appellants who are materially affected, and not by professional grievance-mongers, as many municipal office-holders had claimed. Groeneveld therefore concludes that the rescinding of the right of appeal is not the optimal solution for the problem of speed.

Van den Berg and Pronk (1975) themselves suggest the rescinding of the appeal to the provincial government instead. They argue that the provinces get enough opportunity of influencing the shape of the financial plan during its preparation when consultation between the municipality and the province is mandatory. The province can, furthermore, be given the right of appealing to the Crown. However, since the eleven existing provinces might, anyhow, be replaced by 24 new-style "mini"-provinces which will involve an altogether new distribution of powers and responsibilities, it is now unlikely that this recommendation by Van den Berg and Pronk will be acted upon.

The working party mentioned before utters similar warnings to those by Groeneveld, Van den Berg and Pronk but does not concern itself with these matters in any depth. It concentrates rather on reducing the actual time it takes to go through the procedure as it is. Its first conclusion is that little can be achieved through reducing statutory periods within which certain of the steps involved have to be taken. For the rest, it recommends a mixed strategy of streamlining procedures, early consultations, the use of article 11 of the Physic-
al Planning Act which allows for a global instead of a detailed plan to be adopted (see below) and finally an improvement of the manpower situation on all levels of the planning machinery.

For the present purposes, it would go too far to go into further details. The general impression created by various sources is in any case one of frustration. There does not seem to be an easy way of increasing the speed with which “bestemmingsplannen” are adopted. For the foreseeable future the quest for flexibility will therefore remain as great as it is now. It is to the provisions designed to afford this flexibility that we must turn next.

4.2.2. FLEXIBILITY IN THE “BESTEMMINGSPLAN”-PROCEDURE

This section refers to relevant articles of the 1962 Physical Planning Act. Some consideration will be given to jurisdiction following Crince le Roy. Reference will be made to some other standard sources and to the case studies completed to date.

We shall start with article 10 of the act which is the key-article, as far as the “bestemmingsplan” is concerned. Then two further articles will be dealt with which are designed to achieve the necessary flexibility through allowing amplifications of and departures from a plan drawn up previously. Finally, a small number of further articles will be recounted which deal with interim and provisional measures.

As mentioned above, article 10 is basic to the matters raised in this section. It requires municipalities to adopt a “bestemmingsplan” for all their territory outside the built-up area. For built-up areas, the adoption of such a plan is at the discretion of the municipality, except for areas for which the provincial government asks for it to be drawn up. In any case, the “bestemmingsplan”, as the name (land-use designation plan) suggests, must give indications concerning land uses. It may be accompanied by a set of plan regulations concerning the use of land and of buildings.

The intention behind the introduction and the wording of article 10 was to create a more flexible instrument than the old expansion plan (“uitbreidingsplan”) under the 1901 Act was. Kocken (1966) was quoted above as complaining that this had failed to cope with the dynamics of post-war development. The memorandum accompanying the act of parliament thus explained that, in the countryside, broad indications as to desirable land uses should be sufficient. Even for areas designated as building land it warned against including too much detail. It also reasoned that plans for built-up areas would inevitably have to be detailed so as to enable applications to build to be tested against them. Because this would involve a great amount of, possibly superfluous, work, plans for such areas were to be optional. Finally, the memorandum drew attention to the uncertainty of many predictions on which plans are based. Plans should therefore not range over too long periods of time, this being the argument for the provision that they should be revised within ten years. As one can see, altogether, a mixture of strategies for achieving flexibility is envisaged consisting of the avoidance or delay of detailed decisions.

As mentioned above, the plan regulations form part of the “bestemmingsplan”. They are a set of rules amplifying land-use designations as indicated on the plan. The great amount of legal argument concerning their wording, often concerning matters of fine detail such as definitions, seems fairly characteristic for Dutch planning legislation, building on the assumption that rules and plans must be precise so as to give legal certainty.

The special difficulty appears to lie in the fact that the Physical Planning Act and the ensuing regulations perfectly recognise uncertainty as a feature of contemporary society on the one hand, but try to cope with it by developing yet more refined rules on the other. What Dutch planning circles describe as the “magic formula” provides an example.
A Crown decision from 1974 concerns this formula (see Rijksplanologische Dienst, 1975). This decision has as its consequence that the Crown will repeal plan regulations which do not state that "Burgomaster and Wethouders" may waive them "if their rigid application would lead to a limitation on the most purposive use of land which cannot be justified by urgent reasons". The latter is a reference to the wording of article 10 of the Physical Planning Act. A high court ruling in 1975 equally insists that "Burgomaster and Wethouders" should, as a matter of course, be given the power to waive plan regulations. Recognition is therefore given to the fact that, since the possibility of waiving them can be written into them, rules are inherently more flexible than maps. But there is still a lot of argument about the limits to which "Burgomaster and Wethouders" may go. On the one hand the Crown has rescinded plan regulations which seemed to impose unduly strict limitations on the most purposive use of land, for instance regulations so detailed as to prevent car parking or the storage of equipment in front gardens, marginal changes of use of buildings etc. On the other hand, much detail is still required. Land use designations in the "bestemmingsplan" must include details as to the nature, height and density of buildings; industrial use must be specified as to the percentage of land to be built over etc. The Crown and the courts also regularly dismiss regulations which are vague, using terms such as "spatial unity", or ambiguous, saying that buildings may be used for this, that or the other. An example is the designation "special housing", which must include a maximum height. The ministerial circular concerning physical planning ("Besluit op de Ruimtelijke Ordening") amplifying the Physical Planning Act goes in the same direction by saying that land use designations must not merely exclude certain uses but positively indicate what the use of land should be. This seems all in contrast with the intention of the law to give the municipalities discretion as to the amount of detail which they include.

Article 11 is one of the articles specifically designed to ensure flexibility, but here the same difficulty arises. As a complement to the facility afforded by the act of reducing the amount of detail included in the "bestemmingsplan", it creates the possibility of delegating decision-making to "Burgomaster and Wethouders". Because we gained the impression that it is used more frequently than article 15 using a similar construction, and because in any case, the Merenwijk scheme makes use of it, article 11 will be treated in some depth.

As indicated, article 11 allows a municipality not only to limit the amount of detail included into a plan, but also to delegate plan-making to the "Burgomaster and Wethouders". As far as land to be developed in the near future is concerned, the plan may thus include provisions that "Burgomaster and Wethouders" must fill in the details subject to certain conditions drawn up at the time of producing the original plan. They also can be given the power to depart from this plan, but again only within certain predefined limits. The detailed plans for each of the planning areas do not subsequently have to be placed on public display, although it is incumbent upon "Burgomaster and Wethouders" to make reasonable efforts to hear representations from interested parties. Their decisions must meet with the approval of the provincial government, for which the latter has two months (instead of twelve, as for the "bestemmingsplan"). There is also the possibility of an appeal to the Crown. Finally, plans worked out in this way are deemed to form part of the "bestemmingsplan" and can be changed in the same, simplified, manner as that by which they are adopted.

Apart from the desire to shorten the time it takes to prepare and approve "bestemmingsplannen", there seems a strong assumption present in Dutch planning that there should be close co-operation between the designers concerned with individual projects and the planners involved in making the rules and plans governing their work. Dutch planning may indeed be characterised as development-minded. Kocken (1966) comments for instance
on the facilities afforded by article 11 that they can “achieve a better fit with practice where the necessity for changing a plan is often felt arising out of a concrete building plan”. One is reminded of the shopping centre Vijf Meiplein, where the director declined to complete the plan until the building plans had become available by arguing that he did not think it right “to submit a plan now when we know what it is not going to be implemented . . . I am expecting . . . revised plans . . . It is only afterwards, and only if the revised plans meet with my approval, that a start can be made with transferring the changes on to the plan”.

The memorandum accompanying the Bill likewise explains that the aim of article 11 is that of achieving flexibility through delegation allowing close co-operation with the designers of prospective development: “The need for flexible adaption applies in particular, though not exclusively, to areas to be developed in the near future. Good physical design is mostly only possible to achieve in close co-operation with the designers of the buildings to be built. The problem is, however, often that when the plan has to be made, it is not yet known who is going to build”. The memorandum then refers to two developments in practice, a plan in The Hague, which in 1951 pioneered the provision that “Burgomaster and Wethouders” may depart from it, and the methods developed in Amsterdam by which the plan only concerned major, strategic features such as roads, main land uses etc. The detailed plan with estate roads, building blocks and lines was only adopted after the development had taken place. Both methods described in somewhat more detail in research note 4 had been at variance with the 1901 Act but would be possible under the present one. Certainly in the Merenwijk scheme, the detailed “bestemmingsplan” can be seen as no more than a set of rules and plans to protect the development from interference and change after it has taken place. This is because, as the translated extract from an article by the Head of the Land Section in the Secretariate of the Municipality of Leiden included in the appendix to research note 4 indicates, that is when the “bestemmingsplan” takes its final form. As the same article also shows, such a degree of flexibility is only possible through the systematic use of consultation procedures between developer, architect, planner and council with an organisation expert as team manager. One is certainly reminded of the “reticulist” managing decision networks whom Friend et al. (1974) have discovered as being of major importance in keeping the many-facetted consultation machinery around such projects going.

The powers to amplify a plan and to depart from it may be used in combination. However, according to the memorandum accompanying the bill, the municipal council must under all circumstances determine all matters relating to the overall concept underlying a plan, as well as to its economic use by land owners such as the type of development, its density etc. Changes made by “Burgomaster and Wethouders” must not pertain to these matters. A plan with these minimum features is called a “globale bestemmingsplan”, sometimes also a “vlekkenplan”. The Merenwijk scheme provides a very early example of such a plan adopted under the 1965 Act.

To illustrate the nature of plan regulations under article 11 and of some of the difficulties arising, some sets of regulations will be quoted. Firstly, two sets of regulations which have been approved, the first pertaining to the Merenwijk scheme. There, the powers of “Burgomaster and Wethouders” to work out the details of the plan and to depart from it are subject to the following conditions:

1. The basic structure of the plan must not be altered.
2. The allocation of land within the plan may not be changed to any significant degree.
3. The area of any particular piece of land designated for a certain use may not be increased or reduced by more than 10%.
4. The detailing must take place in such a way that the total number of dwellings in the whole plan area does not exceed 6,000."

Another set of plan regulations which, according to Crince le Roy, has been accepted by the Crown reads as follows:

"Burgomaster and Wethouders shall detail the plan pertaining to the areas named in articles 3, 5 and 6 and can change it subject to the following rules:

(a) the structure of the plan must not be affected;
(b) the ratio of water surface to land surface must not be changed by more than 5 %;
(c) 1. on the land referred to in article 3 only such buildings may be erected which have a maximum height of 8 meter and other structures serving daily recreational uses with a surface, between them, of a maximum of 3 % of the total surface of the area;
2. the land which is hatched on the map may not be designated as a "day camping area";
(d) in, on, or above the land referred to in article 5 only such buildings may be erected which have a maximum height of 6 meter, as well as other structures necessary either for water management or for connections from one bank to the other, for cleaning polluted water, and for watersport connected with this location on, or nearby, land designated for recreational purposes;
(e) interested parties must be given advance opportunity to complain in writing against an intended detailing or departure, and any eventual appeals must be made available in writing to this College at the time when the detailed or changed plan is sent to the Provincial Government for their approval."

However, the problem with plan regulations according to article 11 lies in the definition of "objective" limits in the discretion of "Burgomaster and Wethouders". An example is as follows: a set of regulations empowering them to designate land reserved for single family housing, gardens and backyards for shops or small workshops, garages or special development, always subject to the condition that (a) the character of the development would not be substantially changed; (b) the capacity of the area, as judged by the number of single family houses, should not be reduced by more than 10 %, did not meet with the approval of the Crown. The latter argued that, irrespective of what the regulations said, a concentration of, for instance, workshops in one area might still substantially change the character of at least part of the development.

As similar cases show, the "objective" limits in the plan regulations must also not be so wide as to allow changes between e.g. open space and parking because the interest of third parties might be affected, thus making it necessary that normal (and thus more cumbersome) plan-making procedures should be followed.

In all these instances, the pressure is for including more detail. The following argument contained in an advisory document referring to this article of the act, though not related to plan regulations specifically, points in the same direction: incidental applications to build must be withheld until such a time that a detailed plan becomes available, unless it is clearly evident that the building would fit into the final plan. The document reasons as follows:

"It is obvious that the difficulty of deciding this question will be smaller, the less global and the more detailed the form of the plan ... ".

Next to various pressures for more detail in the formulation of rules and plans, there is another tendency counteracting the intention of article 11 to achieve flexibility through, amongst others, delegating plan-making. This is a certain reluctance to let control over plan-making slip into the hands of the "Burgomaster and Wethouders". One of the plan regulations quoted above therefore included the requirement that appeals must always be submitted to the full council. A much more elaborate set of procedures has been worked
out under the name “Monnikendam-model”. It requires drafts of detailed plans to be put on display and allows for appeals, much the same as with the normal “bestemmingsplan” procedure, though in a somewhat simplified form. After this, the council considers all appeals and gives the “Burgomaster and Wethouders” guidelines as to the nature of the final plan. These model-regulations also require a committee to be set up to advise “Burgomaster and Wethouders” concerning matters related to the implementation of a plan. This committee has nine members of which at least four must be members of the public from the area concerned, three council members and two representatives of social agencies concerned with the area. It is obvious that this rather formal interpretation given to article 11, however desirable it may be, can cause delays and thus counteract flexibility.

The second article with a special bearing on flexibility is article 15. It introduces the twin powers to waive conditions and impose conditions similar to standard provisions made in most building bye-laws (see above). Plan regulations may thus include a provision giving the “Burgomaster and Wethouders” the power to use either of these instruments. The difference is that this one applies to incidental applications. Whereas the powers under article 11, may be invoked at the initiative of “Burgomaster and Wethouders”, these come into play only when an intending developer approaches them. The article follows, and expands upon article 36 (3) of the 1901 Housing Act of which mention was made above.

As usual the discretion of “Burgomaster and Wethouders” under article 15 is also subject to “objective” limits. Again as usual the Crown is strict in its interpretation of this requirement and rejects plan regulations which do not circumscribe their discretion in fairly precise terms. Expedients such as the provision that “Burgomaster and Wethouders” must take the advice of experts concerning applications are never accepted as a substitute for predefined limits.

Next to the imposition of objective limits, with all the implications which this has in terms of the amount of detailed considerations required in plan-making, doubts concerning the exercise of discretion on part of the “Burgomaster and Wethouders” are reflected in a further provision saying that certain classes of waivers may be subject to the approval of the provincial government. Although this provision has been introduced ostensibly to take account of broader concerns reaching beyond the municipal boundaries, it nevertheless reminds one of the traditional notion of the “Rechtsstaat”, perceiving the centre as the source of legality.

To round off this account of flexibility in the “bestemmingsplan” procedure, a number of provisions will be mentioned allowing for temporary uses, phasing and for the building of light constructions (see also research note 5).

Article 12 allows for provisional land use designations and regulations. This should avoid the freezing of development. Provisional designations can only be given to areas with a definite designation. The aim is to allow the present use of land to continue, and even to intensify, until such time as it would be used for its definite designation.

Article 13 says two things: as with action areas in British structure plans, a land use plan can indicate those areas for which land use changes have to take place in the near future, and it can indicate similar areas for which the municipality will not instigate such changes before a certain predetermined point in time. The first provision aims, amongst others, at increasing the speed of compulsory purchase procedures (see the relevant section above) and has been added as late as 1973. It relates to the recent Compulsory Purchase Act of 1972. There is a saving in time because, for such areas, the requirement of publishing a draft expropriation plan (against which people could object) can be waived for up to three years after the approval of the “bestemmingsplan”, the argument being that there had been sufficient opportunity to discuss the measures proposed during the period when the
“bestemmingsplan” was under discussion. As against this, the second provision (which, apparently, is very rarely invoked because it entails a definite commitment over a long period of time) has the reverse consequence, i.e. compulsory purchase may not begin until after the date stipulated by the plan regulations.

Finally, articles 17 and 18 give the “Burgomaster and Wethouders” powers to exempt works needed to fulfil a temporary requirement from the plan conditions for up to five years. The regulation may, alternatively, state that the use of this power of exemption has been excluded. Greenhouses and other industrial buildings of light construction for market gardening or agricultural use may also be exempted.

At the time of introducing the act, these provisions were thought necessary because, the argument went, there could always be circumstances arising which, at the time of drafting a plan, could not have been foreseen, and which make the erection of some provisional buildings necessary. A provisional post-office in a pre-fabricated building erected in the shopping centre Vijf Meiplein at a time when there was a definite need for this service provides a case in point. More about this will be reported in a future case-study.

No doubt the impression created by this description is one of a cumbersome piece of legislation. We cannot yet pass judgement on this. One of the experts in this field, Brussard (1971), seems to be confident that articles 11 and 15 do provide flexible planning instruments and ascribes the insufficient use which municipalities make of them to uncertainties about their interpretation. Even so, we have gained two impressions thus far: firstly, there are considerable skills involved in the optimal use of all the provisions provided by Dutch planning and housing legislation, skills which, though no doubt as creative as design skills are, go far beyond these in taking into account the subtleties of the law. These skills are not necessarily available to all municipalities, which is why Koeman (1974) suggests provincial advisory commissions to help them. Secondly, there is a somewhat loose fit between the edifice of the law and day-to-day planning practice. After all, only a fraction of all plans goes through either a Crown or a court procedure. The rest are subject only to approval by the provincial government. The province, however, may be willing to lean over backwards to help municipalities in achieving their ends, especially where there is the political will behind local plans to get them approved. Perhaps this is all to the best, as far as flexibility is concerned. But it is a sobering thought in a “Rechtsstaat” nevertheless and once again should cause some concern to theorists of administrative law.
5. PRACTICAL EXPEDIENTS: THE AVOIDANCE OF DECISIONS AND OPPORTUNISTIC DECISION-MAKING.

In this final section we shall deal with miscellaneous practices, some of them involving the use (or mis-use) of the law. They have in common that they amount to a degree of avoidance of decisions bordering on opportunism. This has certainly been recognised, at least as far as one of them, the use of articles 19 and 21, and the wide-spread use of powers of anticipation (see below) poses a threat for physical planning.

The practices which we shall deal with are the use of non-statutory instead of statutory plans and policy documents; the adoption of plans for only very small areas ("postage-stamp plans"); the use of private agreements instead of statutory plans to obtain the ends of the municipality; and finally the use of the famous, or infamous, article 19.

5.1. INFORMAL PLANS

Local planning uses two forms of plan: the "structuurplan", a general and programmatic plan with no immediate consequences for the citizens, and the "bestemmingsplan", which is the main statutory plan. However, as research note 5 has already emphasised, few Dutch municipalities have a "structuurplan". The incentives for preparing and adopting it seem too few: for areas where a "structuurplan" is in force, some statutory limits may be extended over and above the normal period allowed for in the law. These incentives do not compensate for the efforts involved. In addition, a "structuurplan", although not subject to approval, must be sent to the province and to the inspector for physical planning. These might, if they so wished, bring about a different sort of "bestemmingsplan" than intended by the "structuurplan" by invoking various powers to instruct municipalities as to its content. The cards are therefore stacked against the "structuurplan".

This does not mean that no programmatic planning takes place. In one instance drawn from another research project with which we were involved, the municipality avoided having to officially inform higher authorities by adopting a kind of informal policy document ("structuurnota") instead of a "structuurplan" (Planning in kleine plaatsen, 1975). Although such documents may lead to an official plan, our impression is that they often do not.

Of course, it seems only sensible to prepare informal policy documents designed to explain and co-ordinate policy. We have taken note of various such statements concerning the inner city and parking provisions in Delft, and also an annual housing policy statement used internally at Leiden. What causes concern is that, in laying down guide-lines for the future, one is influencing decision-making, but their formulation is not surrounded by the same safeguards as are statutory plans. The dilemma, however, is obvious: if one were to impose such requirements, then their value as flexible instruments would be largely lost. One can only surmise about whether, in this event, policy-makers would prefer to use yet more informal, or even clandestine, documents for exploring and co-ordinating policies.

5.2. "POSTAGE-STAMP" PLANS

There are about fifty "bestemmingsplannen" in force at Leiden. These cover, as the law prescribes, the whole of the non-developed area of Leiden, and a considerable part of the developed area, with the exception of the inner city.

As a case study in progress of South-West Leiden will demonstrate, the existing plan for this expansion scheme dating from 1959 (which is thus but one out of the fifty plans referred to above) is itself an amalgam of several plans adopted previously. One of them ran into difficulties, with the Ministry of Transport ("Rijkswaterstaat") objecting against the lay-out of one crossing point. The effect was that about ten square meters were simply
taken out of the area of the “bestemmingsplan”. The statutory plan thus excluded this area about which no decision was taken for some time.

The map showing the various “bestemmingsplannen” for Leiden indicates that the use of similar expedients must be a regular occurrence. For instance, for some small fringe areas of South-West Leiden, the plan dating from 1955 is still in force. For parts of the city, the 1933 plan still applies etc. etc. Apart from some big ones, the map therefore shows a great number of very small planning areas. For this phenomenon, Dutch planning practice has coined the term “postage stamp plans”.

We have not been able to study this phenomenon in any depth, and our comments must therefore remain superficial. It seems, however, that this practice in some way reflects the need for flexibility. But the problem which it causes is equally obvious: where such minuscule plans do not fit into some overall programme it is unlikely that any linkages between developments in the planning area and elsewhere have received the attention they deserve. The note which it takes of linkages is, however, one of the rationales for planning. Our hypothesis is therefore that the practice described as the adoption of postage stamp plans will be characterised by a considerable degree of opportunism.

5.3. PRIVATE AGREEMENTS

Dutch municipalities often pursue an active land policy. In both case studies conducted to date it became evident that, in a situation such as in Leiden, where land is at a premium, their ownership of land resulting from this policy gives them a certain degree of control over future development. Van Driel and Van Vliet (1974) indicate that this is a general opinion held in Dutch planning circles:

“Such municipal preparation of building land has the advantage that the authority has control over the phasing and speed of an expansion scheme and that development does not occur in bits and pieces, as is often the case with the private development of land.”

Van Zundert (1973) lists two further advantages of an active land policy: the safeguards which it offers for the high technical standard of all the works connected with the preparation of land and the possibility of democratic control. Both these works fail to mention a further opportunity which public ownership of land affords: the use of private agreements to pursue the goals of the municipality which might otherwise have to be embodied in statutory plans. Even though land may be in public ownership, development, even in the subsidized sector, is almost always undertaken by development companies and housing corporations, and not by the municipalities themselves. In selling the land, the municipalities enter into private contractual relationships with these bodies. Because the legal safeguards surrounding statutory instruments are cumbersome, municipalities according to Kocken (1966) are sometimes tempted to use private agreements in lieu of them. Subject to their acceptance by the intending developer, municipalities are of course free to impose even such conditions which otherwise they would have had to embody in the “bestemmingsplan”, the attendant plan regulations and the building bye-laws. These could apply to density and other design standards, lay-out and even to matters such as the choice of the architect to commission for the design work, a practice which exists for instance in Rotterdam. Matters which are outside the scope of regulations, such as the colour of the paintwork, may also be included. On this, Kocken (1966) may be quoted once again:

“The fact that the municipality itself is the land owner has as a consequence that it can get its way partly by entering into private agreements, by including, into the terms of the sale, conditions pertaining to the buildings to be built on the piece of land under consideration...
The conditions which form part of the contract and which fill in the details of, or make amendments to, the plan regulations, are of great practical importance. As an example we may take a situation where an expansion plan (the forerunner of the “bestemmingsplan” — AF/SH) indicates industrial land use and where the municipality in either selling the land or giving it in leasehold, exercises control with respect to plot sizes, the nature of the buildings to be built, street profiles, the amount of space for storage of materials, etc. In this connection it is worth noting the arrangement made by the City of Rotterdam with respect to land covered by the so-called “Basic Plan for the Reconstruction of the Inner City of Rotterdam”. This plan offers insufficient scope for control over the designation and the use of land and the buildings to which it applies. For a large part, its planning aims are therefore achieved by way of private agreements, this with a view to giving them statutory sanction afterwards.

In the Merenwijk case, the role of private agreements was not quite so important, if only because the whole process was characterised by close consultation between all those concerned. During the process decisions emerged only to be translated subsequently into various statutory and other legal instruments, private agreements being one of them. The matter was more clear-cut in the case of the shopping centre Vijf Meiplein, where bargaining over the terms of sale constituted an easily identifiable phase in the whole process. However, the bargaining did not concern physical design matters. On the contrary, since the development company was willing to take over the plans drawn up by the architect on behalf of the municipality, the influence exercised by the authorities on these matters was complete.

In this instance, the inclusion into the contract of a clause to this effect only ratified an understanding between the municipality and the developer which was basic to the Vijf Meiplein project. Also, because this project and the terms on which it was undertaken were in accordance with the statutory plan (drawn up after the building plans had been completed), this case does not provide a clear example of the use of private agreements to achieve planning aims either. Even so, the bargaining around other aspects of this project, such as the right to allocate the apartments built, illustrates how municipalities may use private agreements.

Kocken (1966) is prepared to be pragmatic about the use of private agreements for planning purposes, at least under the regime of the 1901 Act. At the same time, he expresses hopes that the situation might change under the new act (which has of course come into force since):

“A matter deserving special attention is that, as far as housing development on land is concerned, which is the property of the municipality, and for which an outline expansion plan (“uitbreidingsplan in hoofdzaak”, the forerunner of the “globale bestemmingsplan” — AF/SH) is in force, the 1901 Housing Act enables arrangements concerning matters pertaining to development to be made by means of private agreements. It is true that outline expansion plans must be amplified or replaced by more detailed plans, as soon as the land comes up for development. But development is often so fast, and the advantage of not having a detailed plan so evident, that the municipality often does not get round to adopting a detailed plan. This means in fact that the nature and density of housing development, the lay-out of building blocks, the street profile, building heights etc. are stipulated in the terms of sale.

Time will tell how practice will develop under the new Physical Planning Act which, after all, has dropped the distinction between outline and detailed plans (but introduced the possibility of a “globale bestemmingsplan” instead — AF/SH).”

That private agreements to amplify a “bestemmingsplan” are still used, became evident during a presentation of a “globale bestemmingsplan” for another municipality which we attended. This presentation comprised a vague statutory plan accompanied by fairly detailed design-guidelines for how to work it out. These concerned the lay-out of streets, including street-profiles and maximum building heights, and the design of open space, canals, footpaths etc. They were described as covering the middle-ground between a “globale bestemmingsplan” and the detailed lay-out of housing areas. Asked about the
methods by which adherence to guidelines going beyond the "globale bestemmingsplan" would be secured, the authors of the plan mentioned private agreements concluded with prospective developers at the time of the issue of the land.

Possible complaints against the use of private treaties concern the very reasons for which they are apparently used: in deciding on matters which must be deemed to be of public concern by virtue of the fact that they are governed by statutes, they circumvent democratic control. Also, by allowing such matters to become the object of bargaining, the outcome of which is inherently uncertain, they create the danger of opportunism, much as the other practices described in this section do.

5.4. ARTICLE 19 AND RELATED POWERS

In anticipation of a "bestemmingsplan" a Dutch municipality may take a "voorbereidingsbesluit" or preparatory decision, under Article 21 of the Physical Planning Act, in which it declares that a "bestemmingsplan" is being prepared for a particular area. Such a decision seeks to preclude development which might conflict with the plan when it eventually comes into force. A "voorbereidingsbesluit" has the consequence that requests for building or "lay-out" permits which cannot be refused must be deferred. It has a validity of one year. If a draft bestemmingsplan is placed on display during that year, the "voorbereidingsbesluit" remains in force until that plan comes into effect. Other conditions which affect the period of validity of a "voorbereidingsbesluit" are as follows:

(i) if the decision is taken as the result of a directive from the province or from central government and an appeal is made against this, then the period of validity begins on the date of the appeal decision.

(ii) if the "voorbereidingsbesluit" is taken by the provincial executive, as in cases where a directive has been issued to the municipality to make or revise a plan, then the period of validity may be extended by one year.

(iii) a "voorbereidingsbesluit" for a built-up area for which a "structuurplan" is in force may last for two years and can be extended for a further year at the discretion of the provincial executive.

The obligation to defer decisions on applications for building permits in areas covered by a preparatory decision applies even when these conform to an existing plan. But to assist in a smooth transition from one plan to another, there are ways of circumventing the obligation to defer. Proposals which are not in conflict with the anticipated plan may be granted permits in anticipation, provided that the provincial executive makes no objection, under article 46 of the Physical Planning Act and article 50 of the Housing Act.

However, if these proposals conflict with an existing plan, the use of these anticipatory powers is only possible if the Burgomaster and Wethouders grant exemption from the regulations of the existing plan by making use of the notorious article 19. Such an exemption is subject once again to a declaration of no objection from the provincial executive, which, in turn, must take the advice of the Inspector for Physical Planning.

These anticipatory powers which make use of the articles 19 and 46 of the Physical Planning Act and article 50 of the Housing Act are intended to avoid needless rigidity and inactivity during a period of plan preparation, and especially to allow those parts of the new plan which are uncontested to be implemented. The powers are widely used – and abused – in practice.

In referring to "article 19 procedure" it is common to include the related powers under articles 21 and 46 of the Physical Planning Act and the article 50 of the Housing Act. In the following section in referring to article 19, we follow this practice, using it as a
short-hand term for this cluster of statutory instruments which form the “deus ex machina” of Dutch planning. The ease with which it allows for development, even of a controversial nature, to occur is in sharp contrast with the detailed and careful guarantees which otherwise characterise Dutch planning legislation. In a translated excerpt appended to research note 4 *), Brussard was therefore quoted as warning against the danger of municipal councils shunning the “bestemmingsplan” procedure altogether in favour of the ad-hoc use of article 19 and the attendant regulations by which legal certainty is severely limited. On the one hand, the process of making a “bestemmingsplan” may take many years. On the other hand, important departures from a plan can occur without interested parties having any real possibility of objecting. “The citizen must sometimes get the impression that legal certainty only applies to the construction of sheds and not to the construction of industrial areas or major roads.”

Buit (1975) in his inaugural lecture devoted to flexibility, gives an example of the alienating effect of the uncertainty ensuing:

“Because of the small scope of each individual adjustment, the continuous introduction of piece-meal changes to the “bestemmingsplan” makes a difficult target for objections and protest. This results in a procedure which entails the danger that negative externalities are neglected, and this whilst the sum of all the changes may very well lead to results which are perceived as substantially negative. As an example Overvecht-Zuid may be quoted where the announcement of the intention to build six tower-blocks in an open space-cum-park led to massive protests, while a series of in themselves more limited incursions into open space next to the station (building of the station itself, bus stop and parking area, after this the building of offices combined with apartments near to existing development, subsequently owing to increased traffic generated by the station and offices, expansion of the land used for traffic circulation and parking) could occur unnoticed and without any opposition . . .

Flexibility can lead to a feeling of threat, this being a consequence of the lack of knowledge about, and the unpredictability of, the application of spatial flexibility . . .”

A decision to prepare a new plan must be taken before article 19 powers may be invoked. However, as Crince le Roy points out, the formal decision to prepare a plan is often taken with the sole purpose of allowing a departure from the existing one. In other words, such decisions are frequently not followed up by a new plan. This practice is only possible through the connivance of the provincial government who must give prior approval to every single building permit issued under article 19 and its attendant regulations.

It is not only private individuals who can suffer from this. Article 19 can also be used to anticipate the implementation of a “bestemmingsplan” which has not yet been approved. Van Zundert (1973) writes about this as follows:

“By realising part of the “bestemmingsplan” in this manner in the meantime, the usual official examination by the Crown looses much of its practical effect. As far as the official examination of the plan regulation is concerned, the Crown is, in a way, circumvented . . . Somebody else who is in effect also circumvented by the practice of article 19 is the municipal council, that is at least as long as article 19 is not amended so as to include the requirement that the council must approve of its use. An amendment of this article to this effect is in the offing. This will also include official adoption of an appeals procedure.”

As this last quotation already indicates, article 19 is the subject of much discussion. Many circulars have been issued by provincial governments and various advisory bodies. Initially, the concern was more directed towards facilitating the processing of the many thousands of cases (about 14,000 in 1973 alone) than for any dangers to legal certainty. The provinces simply did not wish to get bogged down in a wealth of detailed applications. Thus, the province of Gelderland gave all municipalities approval for certain kinds of anticipation (Utrecht and North-Holland followed suit). According to Crince le Roy, this undoubt-edly eased the administrative load but went against the spirit of the law. The province of
Drente followed suit in 1971 nevertheless, indicating that they had the backing of the inspector for physical planning.

However, Drente also introduced for the first time a kind of appeals procedure against invoking article 19. But it was only during 1973 that provincial governments finally began to change their minds. They now try to apply the law more strictly, something which the Crown in its jurisdiction has always pressed for. Also, according to a judgement passed in 1974 the use of these powers can only be justified when it is obvious that the Crown will reject any appeals against the future “bestemmingsplan”. Current practice is difficult to determine.

The new procedural safeguards introduced here and there, such as the requirements that article 19 procedures should be publicised and the introduction of appeals, go in the direction indicated by Van Gunsteren (1972) of the development of new judicial safeguards to cover informal practices. Whether these will be sufficient, and how municipalities will meet their apparent need for substantial discretion in the face of the rigidity of planning law in future, remains an open question.

That such a need exists can be seen from the history of article 19. Until 1950, no similar escape clause existed under the 1901 Housing Act. The latter only allowed for temporary permits to be issued for greenhouses and sheds. In the immediate post-war period when the pressure for quick decisions was great, these terms were simply given a wide interpretation until in 1950 the Reconstruction Act came on the statute book. Article 20 of this Act was the immediate forerunner of article 19 of the 1962 Physical Planning Act. It provided a legal basis for massive reconstruction and for new development by-passing physical planning. This is because article 20 allowed for temporary permits to be given for periods of up to ten years for buildings contravening expansion plans which “owing to wartime circumstances could not be revised in time and which are therefore outdated” (Kocken, 1966). After ten years the buildings concerned had to be removed at the request of “Burgomaster and Wethouders”, a provision which was very rarely invoked.

On 1st August 1970, the Reconstruction Act was repealed and the 1962 Physical Planning Act became fully operative at last. Until then, vast areas must have been developed by invoking article 20-powers. In a case study to be undertaken of the further development of the shopping centre Vijf Meiplein we shall, for instance, learn of how the province advised the municipality to use this article so as to promote development, the back-log of statutory plans notwithstanding. We shall, indeed, learn of what must be one of the last instances of the invocation of this article: on advice of the provincial government, “Burgomaster and Wethouders” of Leiden convened on 30 July 1970 to issue a building permit to a bank wishing to open a branch office in South-West Leiden. The permit proudly announces “approved under article 20 of the Reconstruction Act – The Hague, 31st of July, G. S. (provincial government) nr. 75”. It also refers to an intended review of the statutory plan dating from 1959. That this was only to conform to the letter of the law is evident from the fact that, to date, no such review has been undertaken.

It does not seem to have been the intention behind the 1962 Act to allow continuation of this practice. Article 19 reads as follows:

“For an area for which a decision to prepare a plan has been taken, or a draft review of a “bestemmingsplan” has been put on display, it is within the power of the “Burgomaster and Wethouders” to waive provisions of the “bestemmingsplan” in force on condition that a prior declaration has been received from the provincial government that they do not object to the use of this procedure . . . ”

The memorandum accompanying the bill explains this article by saying that social development should experience as little impediment as possible from a plan review. The government therefore thought it acceptable to allow departures from provisions of a statutory “bestemmingsplan” when it is sufficiently evident that it will not remain in force.

The fact that, as emphasised above, article 19 continues to be used in ways not anticipated by the law to circumvent statutory planning altogether, suggests the following explanation: the promotion of development on part of public authorities in whose interest all these escape clauses have constantly been used, is a different process altogether from its control. In particular, it is difficult to subject the promotion of development to the same judicial checks as those designed to ensure equity in control. One is therefore again reminded of Van Gunsteren’s thesis of the outdatedness of the traditional “Rechtsstaat” model, confining itself to the exercise of control on the part of public authorities. The solution must similarly lie in the direction which he indicates: a re-think of what legal certainty means under twentieth century conditions created by active government involvement in social processes of all kinds.
6. CONCLUDING COMMENTS.

It seems apposite to end this note with some speculative remarks about future work. The comparison with British planning legislation will, we believe, reveal differences as far as flexibility is concerned. In its references to British planning, the general theoretical section of this note already gave some indication of this. In particular, it seems that the principle of legal certainty, and of the hierarchical model of a normative order which follows, are not quite as strongly developed in Britain as they are in the Netherlands. To give an example, “Burgomaster and Wethouders” can only, and must, reject an application to build if it violates the statutory plan and its accompanying plan regulations and/or the local bye-laws drawn up previously. Contrast this with British practice, where the same decision is made, having regard to the plan, but possibly departing from it if new considerations warrant such a course of action. Note should also be taken of the fact that, as against the Netherlands, the full council formally retains the ultimate power to take such decisions which suggests recognition of the fact that it involves the exercise of discretion and, ultimately, of political responsibility.

It is, however, worth remembering that the starting point is very much the same for both planning systems. They have to cope with situations which, in principle, they can never fully anticipate. It will be very interesting therefore to see whether, beneath the surface of the two planning systems based on different legal philosophies, there are fundamental similarities in the way in which they cope with the problem of flexibility. At least, this is the theoretical promise of this study.

Finally, if this is so, then we may speculate about proposals for the improvement of planning practice which might arise from this present study. The Dutch system of building permits, whose shortcomings we have attempted to identify, might be one possible area where such improvements are conceivable. The British system seems more flexible in allowing (a) departures from pre-conceived plans and (b) the imposition of whatever conditions the planning authority sees fit to attach to a permit to build subject to these being upheld in an appeals procedure. Whether there are lessons to be learned from it must, however, remain an open question, at least until our work has advanced somewhat further than at present.
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ABSTRACTS

Nr. 1. Goals as aids to justification, Some implications for rational planning.

This paper examines the role of goals in the planmaking process. It begins with a critical review of a number of approaches to planmaking, from which it is concluded that the main role of goals lies in the justification of plans, rather than in their design. A further conclusion is that it is preferable to see the planmaking process as flexible and iterative, rather than as linear and with goals defined rigidly at the outset.

These conclusions have implications for the idea of Rational Planning, and of a Rational-Deductive Planning Process. It is suggested that the deductive model of explanation in science has as its aim to present an event as what should be rationally expected. It follows that a Rational Planning Process need not describe the way in which planning proceeds, but rather represents a vehicle by which choices can be justified.

Goals find their main role in justification, because to justify proposals it is necessary to demonstrate that your plans may reasonably be expected to achieve what they are intended to achieve. This concept of justification, with its implications for the form of the planmaking process, is a simple one to comprehend — it is also fundamental to an appreciation of the role of goals in planmaking; to an awareness of how planners actually go about producing plans; and to an understanding of the nature of the Rational Planning Process.

Nr. 2. The nature and purpose of comparative planning.

This working paper contains edited versions of the papers presented at the first Delft seminar on Comparative Planning in May 1974. The first paper, by Frans Vonk, describes experiences and problems encountered in a multinational research project in urban planning in the North-West European Megalopolis. This is followed by a paper on 'The Development of Comparative Research' by Stephen Hamnett, which suggests that there is evidence of a 'natural history' of comparative studies in other disciplines, and which argues for comparisons to be made against explicitly-stated frameworks. In the third paper, Andreas Faludi discusses possible topics for comparative research to be conducted from Delft, emphasising the need for pragmatism.

Finally, Patsy Healy warns against the dangers of functionalism and makes a plea for middle-range theories in a paper entitled 'Towards Comparative Planning Studies'.

Nr. 3. Education for urban and regional planning — the British experience.

During the last ten years there has been a rapid expansion in the provision of planning education in Great Britain. At the same time there have been many changes and developments in both the practice and discipline of planning. This working paper attempts to trace the development of planning education in Britain and to identify those factors which have the greatest influence on this development. The paper ends with a description of the provision of planning education at the present time and attempts to identify the differences between courses in different groups.

A further paper in this series will attempt to analyse Dutch planning education and compare it with that in Britain.

Nr. 4. Project work in education for urban and regional planning.

This paper identifies the importance and potential of project work in both education generally and planning education in particular. One of the greatest strengths of planning education today is the tradition of project work, yet it is a method of teaching which has recently been receiving increasing criticism. The paper identifies the central criticisms and problems associated with project work in the British context. These problems it is argued may be overcome by the use of rigorous methods of curriculum design. The use of these methods would enable the selection of the most effective methods of teaching for particular groups of objectives and ensure that the content of project work is balanced throughout a course.

Finally, it is argued that the organisations knowledge component of project work is largely lacking and that this has led to criticisms of the lack of realism in project work. The paper provides several examples of the way in which organisations knowledge may be incorporated into project programmes. It is hoped that the paper may help to promote the discussion of project teaching in education for planning in the Netherlands and that further contributions on this subject can be published in the future.

Nr. 5. De Rijks Planologische Dienst.

This work presents an overview of the history of the Rijksplanologische Dienst. It begins with a description of ideas about national physical planning which existed towards the end of the 30s. It was then argued that a national (physical) plan was necessary and that an organisation was required to prepare and administer it. Proposals to this effect, made by a state commissioner in 1940, are described. Next the foundation and responsibilities of a national physical planning agency set up by the German occupying power — the Rijksdienst voor het Nationale Plan — are described. A comparison between the original Dutch proposals and the German measures show the influence of the occupying power on the new organisation to have been greater than
generally thought. The next two chapters give an overview of the activities which the Rijks­
dienst developed between 1945 and the beginning of the 60s, and of the problems resulting
from the rather centralised form of planning which was aimed at. At the same time measures
to solve these problems are discussed.
Next the difficulties of reforming planning legislation are discussed. These seem to stem
partly from the problems of centralised planning and from the position of the planning agency
responsible for it in relation to the central government agencies. The last chapter describes
the changes in planning legislation occurring in 1962, and the instruments at the disposal of
the now more decentralised form of planning. A short summary of the work on various
policy statements concludes this chapter and the research paper as a whole.

Nr. 6. A resumé of work in the Institute for Operational Research 1963–74.

This paper describes the work of the Institute for Operational Research since 1963, when it
first began to apply operational research methods to the analysis of complex problems of
public policy. There is an appendix which describes in detail an attempt to apply the approach
known as the ‘Analysis of Interconnected Decision Areas’ in practical situations.

Nr. 7. The social sciences in the planning curriculum.

This paper discusses the social sciences in planning education. It is based on an appreciation
of recent British developments. The last ten years have seen the emergence of the generalist
view of the role of the planner, and its concomitant educational policy on part of the Royal
Town Planning Institute as well as their subsequent modification. Based on research con­
ducted in 1969/70, the paper interprets the situation of one of the social sciences, sociology,
as a contributory skill under the generalist regime in planning schools. It then shows how,
in one of them, this situation has borne within it the seeds of change towards a more in­
tegral role of sociology in the curriculum.
The paper develops this into proposals for how the social sciences might be involved in a
planning curriculum so as to do justice to themselves as disciplines in their own right, whilst
at the same time still assisting the ends of the planning education.

Nr. 8. Contextual rationality and languages for choice

This working paper combines two complementary contributions: one attempting a broad
review of the literature on rational planning arriving at the conclusion that rationality in
planning is only conceivable within a given context, and another showing how this context,
and the structure of the action space which it circumscribes, may be analysed. The latter
paper is accompanied by a worked-up example of a modified form of Analysis of Inter­
connected Decision Areas (AIDA) used by a group of students during an educational project.
This serves to illustrate a point on which further discussion is needed, i.e. that planning may
be viewed as the construction of a problem-specific language. It is only with the help of
such a language that decision-makers can decide how best to solve their problem.


This is a report on a case study done as part of a project comparing planning in Leiden and Oxford.
The study concerns part of a shopping centre in Leiden South-West built in the second half of the
fifties. Next to a description of the object of study it consists of a history of the case, a first analysis
of the participants and their roles, a description of the legal framework and the methods of finance.
The comments at the end reflect the extent to which the author was surprised by some aspects of
what he found. This surprise forms a basis for theory formation which is one of the aims of this
project.

Nr. 10. Ontwikkelingen in de planningtheorie.

The aim of this paper is to provide insights into the structure and the practical application
of planning processes. Use is made of two existing planning models by DROR and FALUDI.
After discussing the development of (procedural) planning theory against the background
of theory formation as such, both these models are evaluated. Finally, an effort is made
to apply the insights obtained by drawing conclusions concerning planning practice.

Nr. 11. Flexibility in Dutch local planning.

This paper suggests that the formal rigidity of the Dutch local planning system reflects
the principles of Dutch law upon which it is based. It also describes the methods which
are used in practice to circumvent this rigidity and to provide the Dutch planner with the
flexibility which he needs in the face of uncertainty on one hand and strong pressures for
commitment on the other. The paper begins with a theoretical discussion of flexibility
and introduces the concept of strategic and tactical levels of decision. Thereafter, the main
legal instruments of Dutch local planning are considered and the paper ends with some
comparative comments on local planning in the United Kingdom.
De Verkenningen in Planning Theorie en Onderwijs worden door de Planning Theorie Groep aan de Afdeling der Bouwkunde van de Technische Hogeschool Delft uitgegeven.

Deze groep is de mening toegedaan dat het niet slechts de taak van het onderwijs in planning is op te leiden voor de praktijk, doch ook hierop kritisch te reflekteneren. Deze ruim opgezette reflektie evenals het internationale perspectief van de groep dient op een degelijk theoretisch raamwerk gefundeerd te zijn.

De groep hoopt substantiële bijdragen van meer dan tienduizend woorden, in het nederlands, engels of duits, te ontvangen van diegenen die deze opvatting delen.

The Working Papers in Planning Theory and Education are published by the Planning Theory Group at the Afdeling der Bouwkunde of Delft University of Technology. This group is committed to the view that the role of planning education should not only be to prepare for practice, but also critically to reflect upon it. This broadly-based reflection (and especially, amongst others, the cross-national perspective of the group) must be firmly based on a framework of theory.

The group invites contributions in the form of substantial essay, in Dutch, English or German, of upwords of ten thousand words from those sharing this view.

Die Arbeitspapiere zur Planungstheorie und Ausbildung werden durch die Gruppe Planungstheorie an der Baukundeabteilung der Technischen Hochschule Delft herausgegeben. Diese Gruppe vertritt die Auffassung, dass die Rolle von Planerausbildung nicht nur die ist, auf die Praxis vorzubereiten, sondern diese auch kritisch zu reflektieren. Diese breit angelegte Reflexion, sowie auch die internationale Perspektive der Gruppe, muss einen wohlfundierten theoretischen Rahmen haben.

Die Gruppe hofft auf Beiträge substantieller Art mit einer Länge von mehr als zehntausend Worten (in deutsch, englisch oder holländisch) von jenen, die unsere Auffassung teilen.

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